CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1943

No. 34

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER,

vs.

C. M. JOINER LEASING CORPORATION AND C. M. JOINER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 11, 1943
CERTIORARI GRANTED APRIL 26, 1943

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CAPTION

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 4th day of May, A.D. 1942, and which said term adjourned on the 25th day of August, A.D. 1942, the Honorable William H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 642 Civil

SECURITIES AND EXCHANGE COMMISSION

vs

C. M. JOINER LEASING CORPORATION, C. M. JOINER and JOHN T. JOHNSON, individually and trading under the style MILLER LEASING COMPANY.

COMPLAINT

(Filed February 16, 1942.)

To the Honorable Judges of Said Court:

1. It appears to the plaintiff that the defendants are engaged and are about to engage in acts and practices which constitute and will constitute violations of Sections 5(a) and 17(a) (2) and (3) of the Securities Act of 1933, 15 U.S.C. § 77e(a) and § 17q(a) (2) and (3); and the plaintiff brings this action to enjoin such acts and practices.

2. This action arises under the Securities Act of 1933, Section 22(a), 15 U.S.C. § 77v(a).

First Count

3. Upon information and belief:

Since on or about December 14, 1940 the defendants have been and are now selling securities, namely, investment contracts, certificates of interest or participation in profit-sharing agreements, fractional undivided interests in oil or gas rights, and interests and instruments commonly known as securities, arising out of and in connection with the sale of assignments of oil and gas leases in the "Joiner Paramount Development" located in McCulloch County, Texas, and in the sale of such securities through the use and medium of a prospectus and otherwise have been and are now, directly and indirecting, using the mails and means and instruments of transportation and communication in interstate commerce, and have been and are now, directly and indirectly, carrying such securities and causing them to be carried through the mails and in interstate commerce, by means and instruments of transportation, for the purpose of sale and delivery after sale.

4. No registration statement with respect to such securities is in effect with the Securities and Exchange Commission.

5. Upon information and belief:

The defendants will, unless restrained, continue to engage in the acts and practices set forth in this count.

SECOND COUNT

6. Upon information and belief:

Since on or about December 14, 1940 the defendants have been and are now selling the securities described in paragraph 3, and in making such sales have been and are now, directly and indirectly, using the mails and means and instruments of transportation and communication in interstate commerce.

7. Upon information and belief:

In the sale of said securities in the manner set forth in paragraph 6, the defendants have been and are now making untrue statements of material facts to purchasers and prospective purchasers, namely:

(a) That Joiner's Paramount location is in one of the largest producing areas in all Texas, when in fact Joiner's Paramount location is not in one of the largest producing areas in all Texas but, to the contrary, is located in an unproductive area surrounded by numerous dry holes and from which no oil production in commercial quantities has been obtained for at least the past three years;

(b) That Joiner has chosen and assembled in McCulloch County, Texas a small block of acreage located in an area literally studded with oil fields, when in fact the area in which the block of acreage is located is not studded with oil fields but, to the contrary, there are no oil fields in McCulloch County, Texas now pro-

ducing oil in commercial quantities, nor has there been for at least the past three years;

(c) That there are five oil fields located in McCulloch County, Texas, when in fact there are not five oil fields located in McCulloch County, Texas but, to the contrary, no oil in commercial quantities has been produced from any field located in McCulloch County, Texas for at least the past three years;

(d) That the Joiner Paramount well is located in a great oil-producing area, when in fact the Joiner Paramount well is not located in a great oil-producing area but, to the contrary, the well is located in an unproductive area surrounded by numerous dry holes and from which no oil production in commercial quantities has been obtained;

(e) That the Joiner Paramount well is located in the heart of one of the largest producing areas in all Texas, when in fact the Joiner Paramount well is not located in the heart of one of the largest producing areas in all Texas but, to the contrary, there is no oil production whatsoever south of the Joiner well in McCulloch County, Texas, and numerous dry holes have been drilled in the area between the Joiner well and the production obtained north of the well in Coleman County, Texas.

8. Upon information and belief:

In the sale of the said securities in the manner set forth in paragraph 6, the defendants have been and are now stating to purchasers and prospective purchasers:

(a) That there are five oil fields located in McCulloch County, Texas south and southeast of the Joiner Paramount well, when the fact is, and the defendants have been and are now omitting to state, that no oil production in commercial quantities has been obtained from such fields for the past several years;

(b) That the map used in offering the leases for sale accurately discloses the number and location of oil fields in McCulloch, Coleman and Brown Counties, Texas, when the fact is, and the defendants have been

and are now omitting to state, that the area covered by the map was reproduced from an oil and gas map appearing as a supplement to the issue of the Oil and Gas Journal of April 14, 1938, and does not reflect the true status of such oil fields as of the date the reproduced map was forwarded to the public, and in addition such reproduced map showed the location of oil fields not appearing on the original map and which do not exist;

(c) That in their opinion the Joiner Paramount well and lease block are situated in one of the most likely locations in Texas where oil production can be expected, when the fact is, and the defendants have been and are now omitting to state, that the Joiner Paramount well and lease block are surrounded by numerous dry holes and that no oil production in commercial quantities has been obtained from wells located in McCulloch County, Texas for at least the past three years;

(d) That the indications are good for obtaining production as result of drilling the Joiner Paramount well in McCulloch County, Texas, when the fact is, and the defendants have been and are now omitting to state, that numerous dry holes have been drilled in the area surrounding the Joiner Paramount well and that no production of oil in commercial quantities has been obtained from wells drilled in McCulloch County, Texas for a number of years.

These facts, which the defendants have been and are now omitting to state, are material and their statement is necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

9. Upon information and belief:

That the defendants have been and are now, directly and indirectly, obtaining money and property by means of the statements and omissions set forth in paragraphs 7 and 8.

10. Upon information and belief:

The defendants will, unless restrained, continue to engage in the acts and practices set forth in this count.

THIRD COUNT

11. Upon information and belief:

In the sale of securities described in paragraph 3, in the manner set forth in paragraph 6, the defendants have been and are now, directly and indirectly, engaging in transactions, practices and courses of business which have been and are now operating as a fraud and deceit upon purchasers in that the defendants, as a part of a regular business, intended to and did engage and are now engaging in the acts and practices specified in paragraphs 7 and 8.

12. Upon information and belief:

The defendants will, unless restrained, continue to engage in the acts and practices set forth in this count.

Upon information and belief:

The defendants and each of them will, unless restrained, continue to engage in the acts and practices set forth in this complaint.

WHEREFORE, the plaintiff prays:

(1) A final injunction enjoining the defendants, their officers, agents, servants, employees, attorneys, successors and assigns, and each of them, from

(A) Directly or indirectly.

(i) Making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell investment contracts, certificates of interest or participation in profit-sharing agreements, fractional undivided interests in oil or gas rights, and interest or in-

struments commonly known as securities, arising out of and in connection with the sale of assignments of oil and gas leases in the "Joiner Paramount Development" located in McCulloch County, Texas, or any other securities, through the use or medium of any prospectus or otherwise;

(ii) Carrying such securities or causing them to be carried through the mails or interstate commerce, or by any means or instruments of transportation, for the purpose of sale and delivery after sale, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended;

(B) In the sale of the securities described in paragraph (i) of this prayer, or any other securities, by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, obtaining money or property by means of untrue statements of material facts or omissions to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, concerning:

(i) The proximity of oil fields to any properties owned or held by the defendants;

(ii) The proximity of large oil-producing areas to any properties owned or held by the defendants;

(iii) Maps purporting to show the location of various oil fields and their proximity to properties owned or held by the defendants;

(iv) The likelihood of successful oil production being obtained as a result of wells drilled by the defendant Joiner,

or any other untrue statements of material facts or omissions to state material facts necessary to be stated in order to make the statements made, in the light of

the circumstances under which they are made, not misleading, similar to those set forth above or of similar purport or object;

(C) Engaging in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon purchasers, and more particularly engaging in the practices set forth in paragraph (B) of this prayer.

CHESTER T. LANE,
General Counsel,
CHRISTOPHER M. JENKS,
Assistant General Counsel,
O. H. ALLRED,
Attorney,
R. F. MILWEE, JR.,
Attorney,
Attorneys for Plaintiff, Securities and Exchange Commission, Room 103 U. S. Courthouse, Fort Worth, Texas.

STATE OF TEXAS }
COUNTY OF TARRANT } ss.:

R. F. MILWEE, JR., being first duly sworn, deposes and says:

That he is one of the attorneys for the Securities and Exchange Commission, plaintiff herein; that he has been duly authorized by said plaintiff to make this affidavit for it and in its behalf; that he has read the foregoing complaint, knows the contents thereof, and knows that the facts therein set forth are true, except such facts as are therein stated upon information and belief; that such allegations on information and belief are based upon matters ascertained by him personally in the course of an investigation

made by him into the affairs of the defendants on behalf of the Securities and Exchange Commission, and that as to these facts so stated on information and belief, he believes them to be true.

R. F. MILWEE, JR.

Subscribed and sworn to before me this 16th day of February, A. D. 1942.

(SEAL) SAM MERRILL,

Notary Public in and for Tarrant County, Texas.

My Commission Expires:
6-1-43

ANSWER OF DEFENDANTS C. M. JOINER LEASING CORP. AND C. M. JOINER

(Filed March 5, 1942.)

To the Said Honorable Court:

Now comes C. M. Joiner Leasing Corporation and C. M. Joiner, defendants in the above entitled and numbered cause and replying to plaintiff's complaint herein with this their original answer say:

1.

Defendants deny each and all the allegations in Plaintiff's complaint except as hereinafter specifically admitted.

2.

Defendants deny that they or either of them are engaged in or about to engage in acts and practices which constitute and will constitute violations of the Sections of the Statutes referred to in Paragraph 1 of Plaintiff's complaint and deny that any action arises under the Securities Act mentioned in Paragraph 2 in Plaintiff's complaint.

3.

Defendants deny that since on or about December 14, 1940 they have sold or have been selling any investment contracts, certificates of interest or participation in profit-sharing agreements, fractional undivided interests in oil or gas rights, and interests and instruments commonly known as securities arising out of and in connection with the sale of assignments of oil and gas leases in the "Joiner Paramount Development" located in McCulloch County, Texas, and in the sale of such securities through the use and medium of a prospectus or otherwise have been or are now directly or indirectly, using the mails and means and instruments of transportation and communication in inter-

state commerce, or have been and are now, directly and indirectly, carrying such securities and causing them to be carried through the mails and in interstate commerce, by means and instruments of transportation, for the purpose of sale and delivery after sale.

4.

Defendant, C. M. Joiner, specifically denies that he at any time sold or offered for sale any investment contracts, certificates of interests or participation in profit-sharing agreements, or fractional undivided interests in oil or gas rights, and interests and instruments commonly known as securities, arising out of or in connection with the sale of assignments of oil and gas leases as alleged; and says that in truth and in fact, his only connection whatsoever with any sale of any oil or gas leases was as an officer of C. M. Joiner Leasing Corporation as hereinafter more particularly set out.

5.

Defendant, C. M. Joiner Leasing Corporation denies that it sold any such interests as described in the Third Paragraph of First Count of Plaintiff's complaint but says in truth and in fact that in the latter part of March 1941, the defendant, C. M. Joiner Leasing Corporation secured and became the owner of oil and gas leases upon approximately Three-thousand (3,000) acres of leases located in McCulloch County, Texas and entered into a contract with A. L. Anthony to drill a test well upon said property to a depth of Two-thousand (2,000) feet unless oil or gas in paying quantities was found at a lesser depth, for a total consideration of $5,000.00 provided the well went to a depth of 2,000 feet, of which amount $1.50 per foot was to be paid as the well progressed downward, and the balance of $1.00 per foot to be paid when the said well was completed; that the said Defendant, C. M. Joiner Leasing Corporation, upon the said contract has paid the sum of $3,509.96, which,

under the said contract is a sufficient amount to pay for the said well being drilled to the full depth of 2,000 feet, overpaying the amount to be paid for the completion of said well to the depth of 2,000 feet; that the said A. L. Anthony is under contract with the Defendant, C. M. Joiner Leasing Corporation, to complete the said well to a full depth of 2,000 feet and has been paid in cash under the contract a sufficient amount to pay for the said well being drilled to the full depth of 2,000 feet; the additional amount of One Dollar ($1.00) per foot, or $1,494.04, to be paid as, if, and when the said well is completed to the depth of 2,000 feet.

6.

Defendant, C. M. Joiner Leasing Corporation has in good faith complied with its part of the contract and paid for the drilling of said well and is looking to and expecting the said A. L. Anthony to carry out his contract to complete said well to the required depth of 2,000 feet unless oil or gas is found in paying quantities at a lesser depth.

7.

Following the execution of said contract between the Defendant, C. M. Joiner Leasing Corporation, and the said A. L. Anthony, the said C. M. Joiner Leasing Corporation did send through the mails assignments of oil and gas leases amounting to 285 acres for a consideration of approximately $1,425.00, and in addition thereto, sold and conveyed to Miller Leasing Company 355¼ acres for $2,430.75, making the total approximately $3,855.75 collected by C. M. Joiner Leasing Corporation; that the Defendant, C. M. Joiner Leasing Corporation, has fully complied with its contract as above stated and has more than paid the full contract price for the completion of said well to the depth of 2,000 feet, and is willing to pay and will pay the additional $1,494.04 when the said well is completed to a depth of 2,000 feet, if necessary to go to the said depth.

8.

That the said Defendant, C. M. Joiner Leasing Corporation did not register with the Plaintiff with respect to said sale of leases but did furnish to the representatives of the Plaintiff a copy of each letter which was sent out at least twenty-four hours before such letter was put into the mails.

9.

Defendant, C. M. Joiner Leasing Corporation, states that it is not interested in continuing in any acts or practices found by this Court subject to any criticism whatsoever, and has not sold any securities as above stated, or offered for sale anything except certain leases as herein more fully set out.

10.

Replying to Section 6 of Plaintiff's complaint, Defendant, C. M. Joiner Leasing Corporation denies that it is or has been selling any securities as alleged, or using the mails or other means and instruments of transportation and communication in interstate commerce except as herein above alleged.

11.

Defendant, C. M. Joiner Leasing Corporation denies that in the making of the sales of any of said leases as charged in Paragraph 7 of Plaintiff's said complaint that it has or is making any untrue statements of material facts to purchasers and prospective purchasers, and denies that it has at any time made any such untrue statements as alleged in said paragraph, and in this connection show to the Court that the only relation between this Defendant, C. M. Joiner Leasing Corporation, and Miller Leasing Company was that of seller of said leases and purchaser thereof as herein above set out and neither this company nor C. M. Joiner, Defendants herein, had any control whatsoever over

the said Miller Leasing Company and nothing to do with what was sent out by Miller Leasing Company and are in no way responsible for anything sent out by said Miller Leasing Company; That neither the Defendant, C. M. Joiner Leasing Corporation, nor C. M. Joiner at any time made the representation that the so-called "Joiner Paramount Location" was in one of the largest producing areas in all Texas, or that either of the said Defendants had assembled a block of acreage located in an area literally studded with oil fields, or made any representations that there were five oil fields located in McCulloch or that the said well was located in a great oil producing area, or that the said well was located in the heart of one of the largest producing areas in all Texas, and the said two Defendants specifically deny that any such statements were made to any person whatsoever either through the mails or otherwise.

12.

Replying to the 8th Paragraph of Plaintiff's said complaint, Defendants C. M. Joiner and C. M. Joiner Leasing Corporation specifically deny that they have been or are new stating to purchasers and prospective purchasers that there are five oil fields located in McCulloch County, Texas, South and Southeast of the Joiner Paramount Well or that they are using in offering the leases for sale any map showing the relation of any oil field to this well; nor have they made any statement that in their opinion the Joiner Paramount Well and lease block are situated in one of the most likely sections in Texas where oil can be expected; nor have the said defendants, or either of them made any statement that the indications are good for obtaining production as a result of drilling the Joiner Paramount Well in McCulloch County, Texas; and further state positively that no literature, statements, maps, letters or memorandums of any kind have at any time been sent through the mails or dis-

played or in any way used in making any sales of the said oil and gas leases which contained any untrue statements or misrepresentations, or with-held any facts which should be known to the prospective purchaser.

13.

Said Defendants answer Paragraph 9 of Plaintiff's said complaint and deny that they have been or are now directly or indirectly obtaining any money or property by means of the statements and omissions set forth in Paragraphs 7 and 8 of said complaint; and deny Section 10 of Plaintiff's said complaint that Defendants will unless restrained continue to engage in the acts and practices set forth in the said Second Count.

14.

Specifically answering the 11th Paragraph of Plaintiff's said complaint, these Defendants deny that they have been or are now directly or indirectly engaged in transactions, practices and courses of business which have been and are now operating as a fraud and deceit upon purchasers of any of such leases; or that they intend to and did engage, are now engaging, or will engage in any of the acts and practices specified in Paragraphs 7 and 8 of Plaintiff's said complaint and specifically deny Paragraph 12 of said complaint that these Defendants will unless restrained continue to engage in the acts and practices complained of in said Third Count.

15.

Said Defendants deny that unless restrained these Defendants will engage or continue to engage in any of the acts and practices in said complaint.

WHEREFORE, Premises considered, Defendants, C. M. Joiner and C. M. Joiner Leasing Corporation pray that the

injunctive relief prayed for by Plaintiff be in each and every particular as to these Defendants denied.

D. A. FRANK,
Attorney for Defendants, C. M. Joiner and C. M. Joiner Leasing Corporation.

STATE OF TEXAS
COUNTY OF DALLAS

Before me, the undersigned authority, on this day personally appeared C. M. Joiner who being by me duly sworn deposes and on oath states that he has read the above and foregoing answer of C. M. Joiner and C. M. Joiner Leasing Corporation and that the allegations therein contained are within the knowledge of Affiant true and correct and that this affidavit is made on behalf of himself and as President of the said C. M. Joiner Leasing Corporation.

C. M. JOINER.

Subscribed and sworn to this the 5th day of March 1942.

(SEAL) BAILEY B. BAXTER,
Notary Public in and for Dallas County, Texas.

MOTION FOR PERMANENT INJUNCTION

(Filed March 10, 1942.)

To the Honorable Judges of Said Court:

The plaintiff, Securities and Exchange Commission, upon its complaint filed herein and the written admissions herein filed of the defendant, John T. Johnson, respectfully moves the Court for an injunction permanently enjoining the defendant John T. Johnson individually and trading under the style Miller Leasing Company from selling securities in violation of Sections 5(a) and 17(a) (2) and (3) of the Securities Act of 1933, as amended, 15 U.S.C. § 17(e) and § 77q(a) (2) and (3) and as prayed for in said complaint.

CHESTER T. LANE,
General Counsel.

CHRISTOPHER M. JENKS,
Asst. General Counsel.

O. H. ALLRED,
Attorney.

R. F. MILWEE, JR.,
Attorney.

NOTICE OF MOTION FOR PERMANENT INJUNCTION

(Filed March 10, 1942.)

TO:
JOHN T. JOHNSON
1318 Wood Street
Dallas, Texas

Please take notice, that the undersigned will bring the attached motion on for hearing before this Court at the United States Courthouse and Post Office Building, Dallas, Texas, on the 16th day of March, 1942 at 10:00 o'clock a.m. or as soon thereafter as counsel can be heard.

R. F. MILWEE, JR.,
Attorney.

O. H. ALLRED,
Attorney.

Attorneys for Plaintiff
103 United States Courthouse
Fort Worth, Texas

Served on March 10, 1942 by R. F. Milwee, Jr.

CONSENT TO ENTRY OF PERMANENT INJUNCTION BY DEFENDANT JOHN T. JOHNSON, INDIVIDUALLY AND TRADING UNDER STYLE MILLER LEASING COMPANY.

(Filed March 10, 1942.)

Comes now, on this 5th day of March 1942, the defendant, John T. Johnson, individually, and trading under the style Miller Leasing Company, and being fully apprised and fully understanding the allegations contained in the complaint for injunction filed herein by the plaintiff, the Securities and Exchange Commission, against me; I hereby enter my voluntary general appearance herein; I admit the jurisdiction of this court; I admit the facts stated in the complaint filed herein are true and that said complaint states a cause of action against me; whereas I do not desire a hearing upon the merits of this cause, I do hereby consent to the entry of judgment, forthwith, permanently enjoining me from violations of the provisions of the Securities Act of 1933, as amended, and as prayed for in said complaint.

JOHN T. JOHNSON,
Individually, and trading as Miller Leasing Company.

PERMANENT INJUNCTION

(Filed March 16, 1942.)

It appearing to the satisfaction of the Court from plaintiff's verified complaint and the written admissions of the defendant John T. Johnson that the plaintiff is entitled to an Injunction permanently enjoining the defendant John T. Johnson, individually and trading under the style Miller Leasing Company, from selling securities in violation of Sections 5(a) and 17(a) (2) and (3) of the Securities Act of 1933, as amended, 15 U.S.C. § 17(e) and § 77q(a) (2) and (3), and it further appearing that a Permanent Injunction is necessary for the reason that, unless restrained, the defendant will engage in acts and practices which will constitute violations of Sections 5(a) and 17(a) (2) and (3) of the said Act;

IT IS THEREFORE Ordered, Adjudged and Decreed on this — day of March, 1942 that the defendant John T. Johnson, individually and trading under the style Miller Leasing Company, his agents, servants, employees, attorneys, successors and assigns, and all persons acting directly or indirectly by, through or under him, are hereby enjoined from:

(A) Directly or indirectly,

(i) Making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell investment contracts, certificates of interest or participation in profit-sharing agreements, fractional undivided interests in oil or gas rights, and interests or instruments commonly known as securities, arising out of and in connection with the sale of assignments of oil and gas leases in the "Joiner Paramount Development" located in McCulloch County, Texas, or any other securities, through the use or medium of any prospectus or otherwise;

(ii) Carrying such securities or causing them to be carried through the mails or in inter-

state commerce, by any means or instruments of transportation, for the purpose of sale and delivery after sale, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended;

(B) In the sale of the securities described in paragraph (i) hereinabove, or any other securities, by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, obtaining money or property by means of untrue statements of material facts or omissions to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, concerning;

(i) The proximity of oil fields to any properties owned or held by the defendants:

(ii) The proximity of large oil-producing areas to any properties owned or held by the defendants;

(iii) Maps purporting to show the location of various oil fields and their proximity to properties owned or held by the defendants;

(iv) The likelihood of successful oil production being obtained as a result of wells drilled by the defendant Joiner,

or any other untrue statements of material facts or omissions to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they are made, not misleading, similar to those set forth above or of similar purport or object;

(C) Engaging in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon purchasers, and more particularly

engaging in the practices set forth in paragraph (B) herein.

WM. H. ATWELL,
United States District Judge.

Approved:

JOHN T. JOHNSON,
Individually and trading under the style Miller Leasing Company.

R. F. MILWEE, JR.,
Attorney for Plaintiff.

STATEMENT OF EVIDENCE

(Filed August 24, 1942.)

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IN THE DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES & EXCHANGE COMMISSION *vs.* C. M. JOINER LEASING CORPORATION, C. M. JOINER and JOHN T. JOHNSON, Individually and Trading Under the Style MILLER LEASING COMPANY.	No. 642 Civil

BE IT REMEMBERED that on the 21st day of May, A. D., 1942, before the Honorable William H. Atwell, United States District Judge, the following proceedings were had in the above styled and numbered cause:

APPEARANCES:

R. F. MILWEE, JR.,
C. W. ASTON,
Appearing for the plaintiff.

D. A. FRANK,
Appearing for the defendant.

A. L. ANTHONY, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Milwee, testified as follows:

Q. State your name, please?
A. A. L. Anthony.
Q. Your address?
A. Dallas, Texas.
Q. In what business are you employed?
A. I am employed out at North American, in the plant detective department.

Q. Prior to that time, what business were you engaged in?

A. Drilling contractor.

Q. Will you state what wells you have drilled within the last two years?

A. I have drilled a well in Val Verde County for the Joiner Oil Corporation, and another in McCulloch County for the C. M. Joiner Leasing Corporation, I didn't complete that.

Q. When did you drill the well in McCulloch County for the C. M. Joiner Leasing Corporation?

A. It was started prior to March 12, 1941.

Q. Will you state briefly the facts leading up and incident to you drilling the well in McCulloch County?

A. In what respect?

MR. FRANK: I think he ought to direct the questions to the witness.

Q. Did you enter into a contract with the Joiner Leasing Corporation for the drilling of the well?

A. I did.

Q. I will ask you to state whether or not you previously blocked up any acreage in McCulloch County, Texas?

A. I did.

Q. To whom did you later assign that acreage?

A. To C. M. Joiner leasing corporation.

Q. Approximately how many acres did you block up?

A. About 4,700, I think.

Q. How many did you assign to the Joiner Leasing Corporation?

A. Approximately 3,060, I believe.

Q. What consideration did you give for those leases?

A. The drilling of a test well.

Q. To what depth?

A. To the Ellenburger lime, or approximately 2,000 feet.

Q. Will you state where that block of acreage is located in McCulloch County, Texas?

A. It is known as the Waldrup area, the northwestern corner of the county, about twenty-five miles northwest of Brady, the County seat.

Q. State what consideration the Joiner Leasing Corporation gave you for your assignment of the 3,000 acres to the corporation?

A. Well, there were some moneys furnished for moving the equipment, and releasing the mortgage I had on the equipment, which was then in Val Verde County, and we got the contract for drilling the well.

Q. Approximately how much money was furnished you?

A. I don't remember exactly, but between four and five hundred dollars.

Q. I will ask you to state whether or not you approached Mr. Joiner, or Mr. Joiner approached you with respect to this block of acreage in McCulloch County, Texas?

A. I approached Mr. Joiner.

Q. I wish you would state briefly what you said to Mr. Joiner?

A. That I thought I could obtain the block, and the possibilities of it, that I had learned from the geologist.

Q. Who was the geologist?

A. Robert H. Anderson, at Coleman.

Q. Did you furnish Mr. Joiner with any information concerning that area at that time?

A. Nothing only what I had been told by the geologist.

Q. Did you furnish Mr. Joiner with a map of the area?

A. Not until after I had assembled the block.

Q. Then did you furnish him with a map?

A. I did.

Q. State whether or not that map that you furnished Mr. Joiner disclosed other wells had been drilled on the area, shown on that map?

A. Yes, sir, it did.

Q. How many wells had been drilled?

A. Three, I believe.

Q. Did the map show that any wells had been drilled on the block of acreage you were assigning to Mr. Joiner?

A. One.

Q. Prior to your assigning these leases to the Joiner Corporation, did Mr. Joiner make any investigation, to your knowledge, of those properties?

A. Will you state that question again?

Q. Prior to your assigning the leases to the Joiner Corporation, did Mr. Joiner, to your knowledge, come in that vicinity and make any investigation of those properties?

A. No, sir.

Q. I will ask you to state who made the location of the well in McCulloch County, Texas, that you drilled?

A. I made the exact location, the geologist suggested the immediate area.

Q. Now, approximately when was it you assigned that three thousand acres to the Joiner Corporation?

A. It was soon after March 12, I don't remember the date.

THE COURT: March 12 of what year?

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oil?

A. No, sir, they were not.

Q. Were they dry holes?

A. They were plugged and abandoned, but two of them were reported as gas wells, would have been a commercial, had there been a market for that.

Q. But they would produce no oil?

A. No, sir.

Q. Did you then later enter into a contract for the drilling of a well?

A. I did.

Q. With the C. M. Joiner Leasing Corporation?

A. I did.

Q. Briefly, what were the provisions of that contract?

A. I was to drill the well to the Ellenburger lime, or approximately two thousand feet. I think the consideration was $1.50 per foot, as the well progressed, and an additional $1.00 per foot on the completion of the well.

MR. FRANK: I believe the contract would be the best evidence.

THE COURT: Yes, of course.

Q. When did you spud the well in?

MR. FRANK: Unless he is going to produce the contract, we move to strike out the evidence in regard to it.

Q. Do you have a copy of your contract with the C. M. Joiner Leasing Corporation?

A. I think I have.

Q. Do you have that with you?

A. No, sir.

MR. MILWEE: Your Honor, I have a copy of the contract.

THE COURT: Well, he asked for it.

MR. MILWEE: I will have it marked as "Plaintiff's Exhibit 1".

Q. I hand you Plaintiff's Exhibit 1. State what it is.

THE COURT: Is that the contract?

A. Yes, sir, it is.

THE COURT: Show it to Mr. Frank.

MR. FRANK: No objection.

MR. MILWEE: We offer the contract in evidence.

(Said contract marked "Plaintiff's Exhibit 1")

THE COURT: You need not put it in evidence. All he wanted to know was what was said about it, I don't think it is very material. No question about the contract. All you want to prove is that he drilled a hole and it was dry, is that it?

MR. MILWEE: I want to prove the agreement with Mr. Anthony.

THE COURT: I don't see what that has to do with the case.

MR. MILWEE: I wanted to show how these leases got into Mr. Joiner.

THE COURT: This says that it was 3,000 acres, to Mr. Joiner, the consideration for the right to drill the well, and he was paid for it, that is as far as it could possibly be of any help to us here.

Q. Will you state again the date you spudded in the well?

THE COURT: March 12, 1941.

Q. Was there a continuous drilling of that well?

THE COURT: What is the difference? Was it a dry hole, or did it produce oil?

MR. MILWEE: It has not been completed.

THE COURT: Let him state whether it was dry or whether it produced oil.

Q. Had you obtained any production from the well?
A. No, sir.
Q. To what depth has the well been drilled?
A. 1,375 feet when I quit.
Q. You are not drilling on the well now?
A. No, sir.
Q. When did you stop drilling on the well?
A. December, 1941.
Q. What was the arrangement between you and Mr. Joiner as to how the corpor ion was to pay you for the drilling of the well?

THE COURT: What has that got to do with it? You are merely claiming that Mr. Joiner is making representations with reference to that property that are not true. I allowed this testimony to go in, assuming you want it for the purpose of showing that his representations are untrue, that is all there is to it.

MR. MILWEE: I was endeavoring to show the relationship between Mr. Johnson and Mr. Joiner.

THE COURT: Johnson is already enjoined permanently, and you are dealing with Mr. Joiner now.

MR. MILWEE: Yes, but I expect to show that in this case some of these representations were made by Mr. Johnson, that Mr. Joiner had knowledge that those representations had been made, I want to show that these men are not dealing at arm's length.

THE COURT: I don't deny you the right to do that, but that is not what you are asking, I want you to get at your case.

Q. I will ask you to state whether or not you occasionally visited Dallas for the purpose of getting money to drill this well from Mr. Joiner?

A. I did.

Q. Did you, in all instances, get your money?

A. I don't understand you.

Q. Did you, in all instances, get the money?

MR. FRANK: I think it is immaterial.

THE COURT: Yes, I don't see the materiality.

MR. MILWEE: Your Honor, if I may say this; the purpose is to show that this witness was referred to Mr. Johnson by Mr. Joiner for funds from time to time, in an effort to show the true relationship that existed between these gentlemen in connection with this promotion. That they are both principals in it. In order to do that, I have to bring in certain circumstances to show that relationship.

THE COURT: He has said nothing to Johnson so far, at all, all the dealings were with Joiner.

MR. MILWEE: I was seeking to bring out the fact that from time to time Mr. Johnson would refer Mr. Anthony to Mr. Joiner to receive funds from him.

THE COURT: What of it?

MR. MILWEE: That is the attempt to show the true relationship between the parties.

THE COURT: What of it?

MR. MILWEE: That they are principals, we think Mr. Joiner had knowledge of the literature sent out to the public, which literature contained false statements.

THE COURT: Ask the question, then.

Q. State whether or not Mr. Joiner ever referred you to Mr. Johnson for any facts in connection with the drilling?

THE COURT: No, I don't see the materiality of that at all.

Q. I will ask you to state whether or not Mr. Joiner gave you any directions to send information concerning the drilling of the well to Mr. Joiner?

A. He did on one occasion.

Q. Will you please state when that was?

A. That was in July, I believe, 1941.

Q. Where were you at that time?

A. At Brady, Texas.

Q. Who was present at Brady, Texas?

A. Mr. Joiner and his wife were there.

Q. Anyone else?

A. And another gentleman called Gunther.

Q. What directions did Mr. Joiner give you at that time?

A. He asked me to wire Mr. Johnson and give him a report on the well.

Q. Did you do that?

A. I wrote the wire for him.

Q. Did you present it to Mr. Joiner?

A. I did.

Q. Did he sign it?

A. I think Mr. Gunther signed it for him.

Q. Did Mr. Joiner authorize you to then send the wire?

A. Yes, sir.

Q. I hand you what has been marked "Plaintiff's Exhibit 2", is that the telegram, a photostatic copy of it?

A. Yes, sir.

Q. You sent that to Mr. John T. Johnson, at Dallas, Texas?

A. Yes, sir.

MR. MILWEE: I offer the telegram in evidence.

(Marked "Plaintiff's Exhibit No. 2")

Q. Did you send any additional telegrams or correspondence to Mr. Joiner?

A. To Mr. Joiner?

Q. Yes?

A. Why, yes, I reported to him quite often on the progress of the well.

Q. Did you send any reports to anyone other than Mr. Joiner?

A. I think I sent Mr. Johnson one report.

Q. John T. Johnson?

A. Yes.

Q. Did Mr, Johnson request you to do it?

A. Yes, sir.

Q. Do you recall the approximate time when you did that?

A. No, I don't.

Q. Was that a letter or a telegram?

A. A letter.

Q. I hand you what has been marked "Plaintiff's Exhibit 3", examine that and state what it is?

A. That is a copy of it.

MR. FRANK: We object to the letter on the ground this will show Mr. Joiner had no knowledge of it or knew anything about it.

THE COURT: Well, he says that Joiner told him to report to Johnson, and that he wrote a telegram which was sent to Johnson. I overrule the objection.

MR. FRANK: I don't think he said he gave directions, but he sent a telegram.

THE COURT: That is true, I overrule the objection.

MR. FRANK: We except.

MR. MILWEE: We offer the letter in evidence.

(Said letter marked "Plaintiff's Exhibit 3").

THE COURT: You don't want me to consider that?

MR. FRANK: No, sir.

THE COURT: All right, I will strike the letter at your suggestion. It looks to me as though you would want that in the record. I cannot conceive why you want it out. Here is the man drilling the well, representing that it has a fine outlook.

MR. FRANK: I will withdraw the objection, then, Your Honor.

THE COURT: No, I have stricken it.

MR. FRANK: As a matter of fact, I don't think it hurts us any, I will withdraw my objection to it, and ask the court to consider it.

THE COURT: I have allowed him to read it. I cannot waiver around in my ruling. After having heard him read it, I think your objection is good, in so far as the interests of the government are concerned, but I strike it. If you wish to offer it later, I will be glad to let you do so.

MR. FRANK: All right, we will offer it at the proper time.

MR. MILWEE: Did you make an investigation of the area out there, prior to drilling the well?

THE COURT: He said he had a geologist to tell him where to drill it. Let us go on and prove your case, if you have one.

Q. Mr. Anthony, will you state the reason why you ceased drilling the well?

A. I was out of money and had engine trouble, broken down.

Q. Did you make an effort to obtain additional money from Mr. Joiner to drill the well?

A. I did.

Q. What did Mr. Joiner state?

A. He said he would have the money for me on the 12th of January, 1942.

Q. Did he have it?

A. No, that is, he didn't give it to me, if he did.

Q. Were there occasions when you made requests of Mr. Joiner for funds that he did not advance those funds prior to that date?

A. Yes, sir.

Q. What reason did Mr. Joiner give you at that time?

MR. FRANK: I believe it would be immaterial, asking Mr. Joiner for money unless it would be shown that the money he asked him for was in accordance with the terms of the contract.

THE COURT: You can cross him on that, I overrule the objection.

MR. FRANK: All right, Your Honor.

THE COURT: Is there anything further? He said he ran out of money and quit because Joiner didn't give him any more.

Q. What reasons did Mr. Joiner give you, that he couldn't give you any money?

THE COURT: What is the difference what the reason was? If he made a contract with him, and made default with him, it makes no difference what the reason was, he might have been broke.

MR. MILWEE: I would like to refresh this witness' memory on that point.

THE COURT: The court is holding that it is not material. Mr. Frank suggests that maybe he didn't have a contract to furnish him any more.

Q. Were you paid up according to your contract?
A. Yes, sir.
Q. What was the delay on drilling this well?
A. Well, the funds, I didn't get them as I needed them, for the continuous drilling of the well.
Q. When you were delayed in getting funds, would that result in caveins in the well?
A. Yes, sir.
Q. Would that increase the cost of drilling it?
A. Yes, sir, it would.
Q. Is your rig still on the well?
A. Yes, sir.
Q. Do you have a contract with Mr. Joiner for the use of it?
A. I leased it to him.
Q. What was the consideration?
A. $25.00 a week.

MR. MILWEE: I believe that is all.

CROSS-EXAMINATION

By MR. FRANK:

Q. The contract that you had was for the payment of $1.50 per foot as you went down, and $1.00 a foot when you finished the well, wasn't it?

A. Yes, sir.

Q. So that the amount of money that would have been due on this well until it was finished, would have been $1.50 multiplied by 1,375, or in the neighborhood of $2,000.00?

A. Yes, sir.

Q. As a matter of fact, Mr. Joiner paid you during the time you were on the well, something like $3,500.00, didn't he?

A. Not quite that much, I don't think .

Q. It was in the neighborhood of $3,500.00, wasn't it?

A. I don't know exactly what it was.

Q. It was considerably more than the contract called for, wasn't it?

A. It was more, yes, sir.

Q. So that Mr. Joiner did not owe you any money at the time you made the demand, when he didn't pay you in December, 1941, that is true, isn't it?

A. That is true.

Q. Now, the location where you put this well is across the river from what county?

A. Coleman County.

Q. Is Coleman County pretty well dotted with oil wells?

A. Yes, sir, there is quite a lot of production in Coleman County.

Q. Was any map that you showed to Mr. Joiner a false map?

A. No, sir.

Q. Did they actually show where there were wells drilled and that there were fields in Coleman County?

A. No, sir.

Q. What did it show?

A. The map I gave him only showed the geology on this particular area, and wells that had been drilled there.

Q. Where were the two wells you spoke of that were gas wells, how far from this well?

A. One of them approximately three-quarters of a mile northeast of this location and the other one a mile and a half or two miles north.

Q. As a general proposition, where you have been drilling in wildcat fields, and struck gas and have not yet found oil, does that indicate anything to your mind as a driller, that oil may be there?

A. The possibilities of finding oil later.

Q. In other words, there are frequently signs of oil in the form of gas, and the finding of gas generally precedes the finding of oil, doesn't it?

A. I wouldn't say generally, but sometimes it does.

Q. You said that your contract was to go down 2,000 feet, or until you struck the Ellenburger lime?

A. Yes.

Q. Did you strike that lime?

A. No.

Q. How deep is that lime there?

A. 1,960 feet, I think is where they reached it in the well northeast three-quarters of a mile.

Q. If it were a fact that there were two or three dry holes in two or three or four miles, or any number of miles, in this particular place, until it had been explored, you do not rule out the possibility of oil being there?

A. No, sir.

Q. Did you or not have confidence in the location as being a good location for an oil well?

A. I did.

Q. Was there anything you wrote Mr. Johnson at any time that was untrue, so far as you knew?

A. No, sir.

Q. Were you attempting to tell the truth as you saw it?

A. I was.

Q. Giving your opinion as you believed it?

A. Yes.

Q. Now, the reason you needed more money there was because your outfit was old, and some of the things broke down, wasn't it?

A. Yes, sir.

JOHN T. JOHNSON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Milwee, testified as follows:

Q. State your name, please?

A. John T. Johnson.

Q. Where do you reside?

A. Dallas, Texas.

Q. What is your business?

A. Printing business.

Q. Any other business besides the printing business?

A. Miller Leasing Company.

Q. What are the activities of the Miller Leasing Company?

A. We buy and sell full 7/8ths oil and gas leases, retaining no part of any interest we buy ourselves.

Q. Who do you buy them from?

A. C. M. Joiner, and C. M. Joiner Leasing Corporation, or whatever the title is.

Q. How long have you bought these leases?

A. Approximately six or seven years.

Q. Will you state the location of the last leases you bought from the C. M. Joiner Leasing Corporation?

A. McCulloch County, Texas.

Q. Did you have a verbal or written contract respecting the purchases of those leases?

A. A verbal contract.

Q. State the substance of the contract?

A. The contract was that I was to get a choice close-up-to-the-well lease for a consideration of $8.00 per acre.

Q. Was that later confirmed by Mr. Joiner in any letter or contract?

A. Yes, sir, it was confirmed in the form of a letter.

Q. Have you produced at this time the literature that you sent to the public?

A. I turned over all of the literature I had to you on that, and I don't have copies of it, especially one, I gave you the last copy in existence.

Q. I hand you what has been marked for identification "Plaintiff's Exhibit 4." State what that is?

A. That is a folder sent out by the Miller Leasing Company, announcing the offering and sale of leases.

MR. MILWEE: I offer this instrument, in evidence.

(Marked "Plaintiff's Exhibit No. 4").

MR. FRANK: We object to it on the ground that he has not shown any knowledge or consent of Mr. Joiner in sending this out, or that Mr. Joiner had any control over it.

THE COURT: Can you connect it up in some way.

Q. I will ask you to state whether or not the letter you received from Mr. Joiner appears in Exhibit 4?

A. It appears in there.

Q. That is a letter Mr. Joiner sent you?

A. Yes, sir.

Q. Subsequent to your verbal agreement?

A. Yes, sir.

MR. MILWEE: There are certain extracts in this exhibit I would like to read at this time.

MR. FRANK: It is not connected up. We object to this going into evidence unless Mr. Joiner is connected with it in some way.

THE COURT: Could you develop it a little further?

Q. I will ask you to state whether or not this exhibit was brought to the attention of Mr. Joiner?

A. Well, now, you gave me a hard one there, I couldn't positively state, but I have reason to believe it has.

MR. FRANK: We object to that answer, unless it is confined to a certain time, it would not be binding on

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THE COURT: Overrule the objection.

MR. FRANK: We except.

MR. MILWEE: I want to read certain extracts from this.

THE COURT: Is that the only reason you had?

A. That would be the only reason, yes, sir.

MR. FRANK: We renew our objection to the instrument.

THE COURT: Can't you take up your case, Mr. Milwee, and find out something about it? I don't like to ask questions, I am just the judge, you know, I don't care who wins this lawsuit.

Q. Mr. Johnson, you have, in previous years, bought these leases from Mr. Joiner, haven't you?

A. Yes, sir.

Q. Will you state what your practice has been in connection with buying and selling these leases, from Mr. Joiner?

THE COURT: What do you mean by these leases?

MR. MILWEE: These leases in other counties?

THE COURT: I am not interested in any leases except these that you charge in this suit, that is all, it would not be fair.

Q. Do you recall the conversation I had with you?

A. Yes, sir.

Q. I hand you a document, and I wish you would examine it to refresh your memory?

MR. FRANK: I don't understand that he can have a conversation with him and introduce the conversation in evidence.

THE COURT: Well, I don't know what the document is. You have the right to ask him the question if you think it will refresh his memory, but counsel on the other side have the right to know what is going on, and not sit back in the dark.

(Whereupon the witness read the document).

A. That is still my testimony.

MR. MILWEE: That is a statement that he made, that he said to the best of his recollection, Mr. Joiner had seen this document.

THE COURT: Ask the question.

Q. Didn't you state that at that time?
A. Yes, sir, that is correct.
Q. Isn't that correct?
A. It is, to the best of my recollection. Mr. Joiner did see a copy of it.

MR. FRANK: I would like to ask a question on voir dire.

THE COURT: All right.

MR. FRANK: What is your recollection as to the first time Mr. Joiner ever saw this instrument he is offering?

A. When did Mr. Joiner first see it?

MR. FRANK: When was it you first showed it to Mr. Joiner, or to him the first time?

THE COURT: I don't think that is voir dire, that would be legitimate cross examination.

MR. FRANK: The reason I thought so, because I think it is necessary to establish that before it is admissible. If he does not establish a predicate, I was trying to show there was no predicate for it.

THE COURT: You can cross examine him on that, it may be that is where it will go, I don't know.

MR. MILWEE: I would like to read certain extracts from this.

MR. FRANK: I don't think the court has admitted it in evidence, I think the court should examine the instrument before it is read in evidence in the case.

THE COURT: This is a circular, which the witness now says he sent out trading as the Miller Leasing Company, and that what he dealt in were leases, as I understand him, solely and exclusively by Joiner. That those leases were in McCulloch County, and promised to be up close to the well that was going and being drilled by Anthony. That the circular sent out, which counsel now offers, was shown to Joiner or Joiner had seen it before it went out. I overrule the objection on that prima facie showing.

MR. FRANK: Did Your Honor say that the witness had testified that he did show it to Joiner before he sent it out?

THE COURT: Yes.

MR. FRANK: That is not my understanding of the record.

THE COURT: I am sorry we did not understand it alike, but my understanding will have to govern the ruling.

MR. FRANK: That is exactly what I was trying to find out, what the witness would testify.

THE COURT: That is what he said, that Joiner saw this circular before it went out, so he told him everything. Go ahead.

(Whereupon Plaintiff's Exhibit 4 was read by Mr. Milwee).

Q. (By MR. MILWEE) Mr. Johnson, I wish you would state to whom you sent that circular?

A. I sent it to approximately fifteen hundred or eighteen hundred people, in various parts of the United States.

Q. I will ask you to state from whom you obtained the names of those parties to whom you sent that circular?

A. From Mr. Joiner and others.

Q. Did you say the names were obtained principally from Mr. Joiner?

A. That is correct.

Q. Did that circular go to everyone that you later sold a lease to?

A. I believe so, yes, sir.

Q. Now, how many acres did you offer for sale?

A. No certain amount.

Q. An unlimited amount, it was not stated?

A. No, sir, it wasn't stated.

Q. Did you have any agreement with Mr. Joiner, as to how many acres you could acquire from him?

A. Only the close up acreage I wanted to purchase, there was no limit, or maximum, no minimum.

Q. You knew how many acres Mr. Joiner had, did you not?

A. Yes, sir, I did.

Q. What price did you pay Mr. Joiner for the leases?

A. $8.00 per acre.

Q. What price did you offer the leases to sell to the public for?

A. $15.00 per acre.

Q. How many acres have you sold to the public, Mr. Johnson?

A. I don't have the particular acreage total here, but 387½ acres, I have the dollars and cents, but not the total number of acres, I would say 387½ acres is the amount I sold.

Q. When did you first send out this Exhibit 4?

A. December, 1941.

Q. I wish you would state how you paid Mr. Joiner for the leases you acquired from him, Mr. Johnson?

A. Well, I paid at different times, and different sums, and when I wanted a lease, I asked that it be made out, and we debited each other and credited each other.

Q. I wish you would state whether or not your payments to Mr. Joiner were dependent on your first having sold the lease to the public?

A. Well, I wouldn't purchase it, only a few acres for my own individual use, unless I sold it.

Q. As a matter of fact, did you pay Mr. Joiner any funds for these leases that you did not derive from the sale of leases to the public?

A. No, sir, I didn't.

Q. In other words, you had to sell the lease to the public before you could pay Mr. Joiner, is that correct?

A. That is correct.

Q. I wish you would state whether or not you sent out any additional literature?

A. Yes, sir, I sent out another piece of literature.

Q. I hand you what has been marked for identification, Plaintiff's Exhibit 5, examine that and state what it is?

A. That is a folder printed and prepared to use with a letter sent out through the mails, soliciting the sale of oil and gas leases.

Q. Approximately when did you send this out?

A. Well, it was sometime in March of 1941.

Q. Through whom did you send those?

THE COURT: March, 1941?

A. Yes, sir.

THE COURT: That is before the other one?

A. No, I said December, 1941, on the other; that may have been December, 1940.

THE COURT: It should have been December, 1940?

A. Yes, but this was 1941, about four months later.

Q. (By MR. MILWEE) Mr. Johnson, to whom did you send Exhibit 5?

A. I sent Exhibit 5 to all who had purchased leases after receiving Exhibit 4, showing them their exact location to the well, and so forth.

Q. You did not send it out to the entire mailing list?

A. No, sir, I sent out about five hundred.

Q. About five hundred copies?

A. Yes, sir.

MR. FRANK: We object, unless he lays a proper predicate by showing Mr. Joiner knows something about it.

THE COURT: Well, he has already passed that now. Overrule the objection. Go ahead.

MR. FRANK: We except.

Q. Mr. Johnson, I will ask you to state whether or not you ever showed this exhibit to Mr. Joiner?

A. Yes, sir.

Q. State when you showed it to him?

A. I couldn't say.

Q. Was it during the period of time that you were selling leases?

A. It was during the period of time I was selling leases, yes, sir.

Q. Do you know whether or not Mr. Joiner was selling leases at that time you were sending this out?

A. He was selling leases on another well at that time.

Q. Another well?

A. Yes, sir.

MR. MILWEE: I want to read certain extracts from this exhibit.

(Reading Plaintiff's Exhibit 5).

Q. Now, also included in this circular is a plat, is that correct?

A. That is right.

Q. Where did you get the information for that plat?

A. I got the information from Mr. Anthony, turned this plat over to me, and I had a licensed engineer to subdivide it into ten acre tracts from the original map furnished me by Mr. Anthony.

Q. How did Mr. Anthony come to furnish you the map from which you made that plat?

A. He just walked in the office and gave it to me.

Q. Did Mr. Joiner direct him to do that, to your knowledge?

MR. FRANK: That is hearsay.

A. There is no way I could know that.

Q. Did you request Mr. Joiner to furnish you the information so you could prepare this plat?

A. No, I didn't request Mr. Joiner to furnish me that.

Q. Did you request Mr. Anthony to furnish it?

A. No, sir, as I remember it, Mr. Anthony came in with all of his maps and his geological reports, and I said I would have to have a map to show the location of the leases, if I sold any and I got that from Mr. Anthony. Whether Mr. Joiner knew Mr. Anthony gave it to me, or whether Mr. Joiner took Mr. Anthony in, I don't know.

Q. Can you state why that information was furnished you?

A. Mr. Anthony came into my office quite regularly.

Q. You stated that on the front of Exhibit 5 was a letter, is that correct?

A. That is correct.

Q. I hand you what has been marked for identification Plaintiff's Exhibit 6. Will you examine that and state what it is?

A. That is a letter that was a part of that, this letter was on the front of that page right there.

Q. Exhibit 6 appeared on Exhibit 5, when it was sent out by you to the public?

A. That is correct.

MR. FRANK: I object to it because there is nothing to show Mr. Joiner had anything to do with the preparation of the sending out of the letter.

THE COURT: I don't know anything about the letter. Counsel objects on the ground that it is not connected up with Mr. Joiner in any way.

MR. MILWEE: I think I can clarify that.

Q. You have stated that Exhibit 5 was shown to Mr. Joiner?

A. Yes, sir.

Q. At the time you showed him Exhibit 5, did it also have on it this letter which is Plaintiff's Exhibit 6?

A. No, sir.

Q. But he did see Exhibit 5?

A. He did see Exhibit 5.

Q. Did you ever show Mr. Joiner a copy of Plaintiff's Exhibit No. 6?

A. No, sir, I don't think I did, I don't think I ever showed him Exhibit 6. You say you have Exhibit 5 and Exhibit 6, is the same piece.

Q. How do you account for the fact that you showed him Exhibit 5, just the circular, without the letter on it, to Mr. Joiner, and didn't show him Exhibit 6, the letter itself?

A. Because he asked for Exhibit 5, because it contained a map, and I used Exhibit 5 for my regular correspondence, that is the letterhead you have there.

MR. MILWEE: We offer the letter in evidence.

(Instruments marked "Plaintiff's Exhibits 5 and 6").

THE COURT: Well, he says Mr. Joiner is not connected in any way with it, is it signed by Mr. Joiner?

MR. FRANK: No, Your Honor, it is signed by Miller.

MR. MILWEE: It is signed by Mr. Johnson.

THE COURT: He said that he had never had it shown to him, but when he shows him Exhibit 5, which appears to carry Exhibit 6, that Exhibit 6 was not on Exhibit 5, at the time you showed it to Joiner, that is the testimony.

Q. Mr. Johnson, have you sent out any additional literature?

A. Yes, sir.

Q. Did you ever request Mr. Joiner to furnish you with any information so you could send it out to the public?

A. I requested him every time I talked to him, for information about the well, to answer correspondence and keep the purchasers informed as to what was going on.

Q. State whether or not you ever asked Mr. Joiner to send you any messages from the well?

A. Yes, sir.

Q. Did he do it?

A. I received a wire with his name signed to it.

Q. I hand you Exhibit 2, is this the telegram that you referred to, requesting him to send?

A. Yes, sir, not only this, but any other information I could get that would help me to sell leases.

Q. Did you send a copy of this telegram to the public?

A. Yes, sir, I sent a copy of that to the public, also to the purchasers.

Q. Now, Mr. Johnson, I wish you would state from where you obtained the information appearing on this map?
A. That is a part—

MR. FRANK: This map does not get into the record, unless it is identified in some way.

THE COURT: The map is allegedly a map made up by the employee, or by a person employed by Mr. Johnson, to make a map or a plat from information furnished to him, Johnson, by the driller, Anthony, and I think that the testimony, prima facie, at least so far, is sufficient to authorize the court to assume for the moment that Joiner instructed Anthony to furnish to Johnson information concerning his acreage and well. I overrule the objection.

MR. FRANK: Note our exception.

MR. MILWEE: On this exhibit, that is Exhibit 5, in evidence, that is the map, I did not make it plain there are two maps, if you wish to examine them.

THE COURT: I allow the whole thing to go in.

MR. MILWEE: I was referring to the other map.

THE COURT: Whatever is in Exhibit 5 is in.

Q. Where did you obtain the information shown on this oil map, Exhibit 5.

THE COURT: You are not talking about the plat that the court referred to just now in making his ruling?

MR. MILWEE: No, sir, I am talking about the map, the oil map.

THE COURT: All right.

A. From the Oil and Gas Journals, Oil map of Texas, included on the map, are all oil and gas producing fields, refinery centers, and oil and gas trunk lines, courtesy Texas Railroad Commission, data as of March 15, 1938, supplementing oil and gas journal No. 4,238, copyrighted 1938 by the Petroleum Publishing Company.

THE COURT: That map, and not the plat, was taken from oil literature secured elsewhere than from Mr. Anthony?

A. That is correct.

THE COURT: And which literature was dated in the spring of 1938?

A. That is correct.

MR. FRANK: Your Honor will see the reason of the objection.

THE COURT: But that does not alter the ruling, because Mr. Joiner saw it at the time he was sending it out. Unmistakably, I must say, Joiner was deeply interested in Johnson making a sale, he was selling at $8.00, and Joiner furnished the names to whom were sent the literature.

MR. FRANK: That is the prima facie case, but Your Honor will bear in mind our contention is that this witness has not testified that this was shown to Joiner before he sent out the literature.

THE COURT: Overrule the objection.

Q. (By MR. MILWEE) I hand you what has been marked "Plaintiff's Exhibit 7". I will ask you to state whether or not this is the oil map from which you reproduced the portion of the map appearing on Exhibit 5?

A. That is correct.

Q. I will ask you to state whether or not it is the oil map, the original dated April 14, 1938?

A. That is correct.

Q. That is correct, isn't it?

A. Yes, sir.

Q. I wish you would examine Plaintiff's Exhibit 7—I will withdraw that—referring to Exhibit 5, I wish you would examine it and state how many oil fields you show on this exhibit, as being in McCulloch County, Texas?

A. It shows five there, which was a mistake, or an error in making the map. The space shown on there, it was easy to get them on there, and it was later corrected to use in this.

Q. When did you correct that?

A. When it was called to my attention, that was by you.

Q. Who called it to your attention?

A. You did.

Q. That was called to your attention long after you mailed it out?

A. That is correct, I would not have mailed it out if I had known it.

Q. I want you to examine Exhibit 7, and state how many oil fields are shown on Exhibit 7, in McCulloch County?

A. Three.

Q. Two more on Exhibit 5?

A. About twenty miles from the well, on the extreme edge of the county.

Q. Now, referring further, to Exhibit 5, I wish you would examine it and state if it does not show in Coleman County just east of Ballinger, an oil field?

A. That is the two spots that I referred to.

Q. Does Exhibit 5 show an oil field in Coleman County, just east of Ballinger?

A. Yes.

Q. I will ask you to examine Exhibit 7, and state whether or not it shows any oil field just east of Ballinger, and which you purported to reproduce on this map?

A. No, sir.

Q. I wish you would examine Exhibit 5, and state whether or not Exhibit 5 shows an oil field just above the McCulloch County line in Brown County?

A. Yes, sir.

Q. Will you examine Exhibit No. 6 and state whether or not it shows a field in Brown County just above the McCulloch County line?

A. Well, it shows one right there.

Q. Is that the same one as that one you show?

A. Well, it doesn't show, that one there doesn't show here, it shows one there.

Q. Just tell the court whether or not the original map shows two fields that you show in Coleman and Brown Counties, which I have described.

A. This one here shows one in Brown County, yes, sir, right there, there it is right there.

Q. Does it also show east of Coleman?

A. No, sir, it was not put in there to mislead, because you would not put them in another county if you sell them in McCulloch County, any spot in another county, you might look at the top and find a spot in there. Those you are referring to, are twenty miles from the well.

Q. Your map, Exhibit 5, doesn't show three additional oil fields?

A. No, sir, it shows two. It shows one in Coleman County and one in McCulloch County and the one in McCulloch County, is, I would say, twenty-five miles from the well.

Q. Now, I wish you would state again whether or not this was shown to Mr. Joiner before you sent it out, Exhibit 5, the oil map?

A. It was shown to him while I was sending it out, I wouldn't say I showed it to him before.

Q. Did you make any inquiry as to whether the information appearing on this railroad map was correct?

A. I taken the railroad commission to be authority for the oil wells in the state of Texas.

Q. You, of course, knew that the map was dated three years prior to that date, prior to the time you mailed it?

A. Yes, sir, I thought it would help, there has been some development down there since then, there has been more development in all of those counties.

Q. Now, examine Exhibit 7, and I wish you would state whether or not this map shows any oil field in Concho County to the west of McCulloch? San Saba to the east, or in numerous counties to the South of McCulloch?

A. It doesn't show, but there is oil in there.

Q. It doesn't show on this map, does it?

A. No, sir, it doesn't show on this map. Does it show on that one?

Q. Mr. Johnson, why didn't you send the entire map out?

A. The space would not permit it.

Q. I wish you would state the method in which you actually obtained these assignments from C. M. Joiner Leasing Corporation after you sold a lease to the public?

A. I would write a letter or a note, or telephone and ask that the lease be made out for various numbers of acres.

(Instrument marked "Plaintiff's Exhibit no. 7").

Q. Did you have a form of lease assignment printed?

A. Yes, sir.

Q. Would it show from the C. M. Joiner Leasing Corporation to the Miller Leasing Company?

A. Yes, sir.

Q. I wish you would state whether or not there have been occasions when Mr. Joiner transmitted funds to you that had been received by the investors?

A. Yes, sir.

Q. Did those investors purchase the lease from you?

A. Yes.

Q. Do you have a list of the parties to whom you sold leases there?

A. Yes, sir.

Q. Could you state whether or not you sold a lease to Mr. Frank Schneider, of 928 North Hazard, Los Angeles?

A. Yes, sir.

Q. On what date?

A. I haven't got that information.

Q. Will you state whether or not you sent a copy of Exhibit 5 to Mr. Schneider?

A. Yes, sir.

Q. I hand you Plaintiff's Exhibits 8 and 9, and I wish you would examine these, and state what they are?

A. No. 8 is a letter acknowledging payment of $25.00. No. 9 is acknowledging receipt for the $25.00 payment.

Q. Were those funds sent directly to you?

A. Yes, sir.

Q. I hand you what has been marked for identification, "Plaintiff's Exhibit 10", examine that and state what it is?

A. That is the lease I sold to Mr. Frank Schneider.

Q. Under what date?

A. It is dated on the 6th day of May, 1941.

Q. Is that the date that it was assigned to you?

A. That is the day it was assigned to me.

Q. By C. M. Joiner Leasing Corporation?

A. That is right.

Q. Turn on the back to see if there is a re-assignment of that lease by you to Mr. Schneider?

A. Yes, sir.

Q. On what date?

A. 6th day of May.

MR. MILWEE: I offer in evidence Plaintiff's Exhibits 8, 9, and 10.

(Said instruments marked "Plaintiff's Exhibits 8, 9, and 10").

Q. Mr. Johnson, I want to ask you if it was not the practice when you acquired these leases from the Joiner Leasing Corporation, that it would be a contemporaneous action, you would acquire the assignment from the leasing corporation at the same time you would immediately reassign it to the purchaser?

A. No, sir, it is not.

Q. To whom you had sold?

A. No, sir. State that question again, maybe I didn't understand you.

Q. When you acquired these leases from the C. M. Joiner Leasing Corporation, you acquired them only when you had previously sold a lease to the public, is that correct?

A. That is right.

Q. You would have Mr. Joiner to assign to you the exact amount of acreage you had sold to investors, is that correct?

A. That is correct.

Q. And those transactions took place at the same time, is that correct?

A. Yes, sir, but I may not have sent the lease out for three months after that.

Q. That would be because the party was buying it on the installment plan, wouldn't it?

A. That is correct.

Q. You never did go to Mr. Joiner, or C. M. Joiner Leasing Corporation, and acquire any leases except when you had first gotten an order from the public for that.

A. That was because I had first sold the undivided lease, when I wanted ten acres, I bought ten acres and sold it.

Q. You wanted it when you sold it?

A. And being a broker, I was entitled to offer it for sale.

Q. I will ask you to state whether or not you sold these to Mr. A. E. Charleston, of Los Angeles, California?

A. That is correct.

Q. Do you know him?

A. I don't know.

MR. FRANK: Why not consider them in evidence? It would save time.

THE COURT: You can put the papers in as one exhibit, he says.

MR. MILWEE: All right, Your Honor.

Q. I hand you Plaintiff's Exhibit 11. I ask you to identify that.

A. I do.

Q. That is a copy of the map which you sent to Mr. Charleston of Los Angeles?

A. Yes, sir it is the same as Exhibits 5 and 6.

Q. I wish you would examine the next letter, Exhibit 11, and state what that is?

A. That is a letter addressed to Mr. A. S. Charleston, by me, and signed John T. Johnson.

Q. You sent it to Mr. Charleston?

A. Yes, sir, I sent that through the mail.

MR. MILWEE: I would like to offer the letter in evidence.

(Said letter marked "Exhibit No. 11").

Q. Now, up until that date, had Mr. Joiner, to your knowledge, sent out any mail there?

A. What is the date?

Q. May 25?

A. To my knowledge, he had not, as far as I know he had not.

Q. Will you state that you had sent Mr. Charleston Plaintiff's Exhibits 4 and 5, prior to the time he purchased this lease?

A. Yes, sir.

Q. You also identified Plaintiff's Exhibit 11?

A. Yes, sir.

Q. The telegram on it?

A. Yes, sir.

Q. Is that a copy of the Exhibit 2?

A. Yes, sir.

Q. The telegram you asked Mr. Joiner to send you, and he sent you?

A. Yes, sir.

Q. You forwarded that through the mails to Mr. Charleston?

A. That is correct.

Q. I hand you what has been marked for identification Plaintiff's Exhibit 12. I wish you would examine that and state what that is?

A. This is general correspondence with Mr. Schneider, of Los Angeles.

Q. You wrote those letters to Mr. Schneider?

A. Yes, sir.

Q. Sent them through the mail?

A. Yes, sir.

MR. MILWEE: I offer the letters in evidence.

(Marked "Plaintiff's Exhibit No. 12").

MR. FRANK: We object, the general objection, that it is immaterial, it is dumping a whole lot of correspondence here into the record, that clutters up the record. I don't know what the materiality of it is. It occurs to me that the court would not want this file in the record.

THE COURT: What is the purpose of the correspondence?

MR. MILWEE: There are letters, included in this, from Mr. Joiner, that he sent to those gentlemen.

MR. FRANK: Why don't you just offer that letter, then, we have no objection to the letter.

MR. MILWEE: I offer the entire exhibit.

MR. FRANK: It is not an exhibit, it is a bunch of correspondence here, and none of it I see is material to any issue here. If he wants Mr. Joiner's letter, it is all right.

MR. MILWEE: I think it is material to show the relationship between these two parties in this action.

MR. FRANK: It is a relation between third parties.

THE COURT: The relations between Johnson and Joiner has already been shown. It has already been shown that Schneider is the purchaser. These letters are leading up to the purchase?

MR. MILWEE: This party bought on the installment plan, and he was paying all along.

THE COURT: What is the purpose of it?

MR. MILWEE: Nothing, other than to show Mr. Joiner furnished Mr. Johnson with letters regarding the promotion and that Johnson would then in turn transmit these out to the various people whom he was endeavoring to sell these securities to.

THE COURT: That is what this file was?

MR. MILWEE: That is what one of the letters in the file is.

THE COURT: You see, you do not want to get in a technical error in the case.

MR. MILWEE: I will withdraw the offer, except the letter from Joiner, and the telegram.

THE COURT: Well, you already have those in the record, you can put them in again if you wish.

MR. MILWEE: No letter from Mr. Joiner, I don't think.

THE COURT: It seems to be a printed letter.

MR. MILWEE: Yes.

THE COURT: Go ahead, the record does not show what it is.

Q. (By MR. MILWEE) Plaintiff's Exhibit 13, state what that is?

A. That is a copy of the report to the leaseholders as to the progress they made.

Q. That is a letter to the Miller Leasing Company from Mr. Joiner, regarding it?

A. That is a report from C. M. Joiner Leasing Company, giving Miller Leasing Company a report on the progress made on the McCulloch well.

Q. You sent that letter out?

A. As a report to the leaseholders.

MR. MILWEE: I offer it in evidence.

(Letter marked "Plaintiff's Exhibit 13").

Q. (By MR. MILWEE) I wish you would state whether or not you furnished Mr. Joiner a list of the names of the Investors to whom you had sold leases in the Joiner Paramount block in McCulloch County, Texas?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. I wish you would state whether or not you sold leases in the Joiner Paramount block to Susie Conway, of Denver?

A. I did, yes, sir.

Q. Do you have the date of that?

A. No, sir.

Q. I hand you plaintiff's Exhibit 14, and ask you to state what that is?

A. It is a photostatic copy of the lease from the Joiner Leasing Corporation to the Miller Leasing Company, a transfer to Susie A. Conway, Denver, Colorado.

Q. What date was the transfer?

A. The transfer was on the 22nd day of April, you will find that they were transferred the same date we received them.

Q. You say all of them were transferred the same date you received them. You mean the date the C. M. Joiner Leasing Corporation issued one to you, you made the assignment on the same day?

A. Same notary public notarized both of them on the same date at the same time.

Q. And the same amount you sold?

A. That is right.

MR. MILWEE: I offer the instrument in evidence.

(Marked "Plaintiff's Exhibit 14").

Q. Do you know whether or not Mr. Joiner also sold a lease to Susie Conway?

A. No, sir, I don't know.

Q. I will ask you to state whether or not you sold a lease to F. J. Pritham, of Greenville Junction, Maine?

A. Yes, sir.

Q. Did you also sell a lease to Sam Bourdon, of Connecticut?

A. Yes, sir.

Q. A. C. Charters?

A. That is correct.

Q. A. S. Charleston?

A. Yes, sir.

Q. Now, in each of those instances, did you send to those parties, Mr. Johnson, Exhibits Nos. 5, and Exhibit No. 4?

A. I have reason to believe I did, yes, sir.

Q. Mr. Johnson, state whether or not you know whether or not Mr. Joiner subsequently sold leases out of the Joiner-Paramount Block in McCulloch County, Texas, to the parties to whom you had previously sold leases?

A. I don't know that to be a fact.

Q. Mr. Johnson, I wish you would state why you furnished Mr. Joiner with the names and addresses of the parties you sold leases to in this block?

A. I furnished the lease showing the people I had sold to.

Q. Did he request you to do so?

A. I don't remember.

Q. Who would select the location of these leases you sold the public?

A. I did.

Q. I wish you would state in what size tracts you sold these leases?

A. Two and a half, five, seven and a half, twelve, eleven, twenty, just different amounts.

Q. You sold them for cash and on the installment plan?

A. That is correct.

Q. Do you now have any pending that are unpaid?

A. I do.

Q. What amount?

A. I don't know, but they have received the lease, I don't suppose they will ever pay for it, I sent everybody

a lease that ever bought one from me. We owe nobody a lease and they haven't paid on some of them yet.

CROSS-EXAMINATION

By MR. FRANK:

Q. You say you sent out leases even to people who did not pay?

A. Yes.

Q. Now, this Exhibit 4 that he has there, shows a letter signed by C. M. Joiner. How long prior to the date of that letter did you receive that letter from Mr. Joiner?

A. What is the date of that?

Q. December, 1940.

A. Well, I received it in December, 1940.

Q. Isn't it a fact that you got the letter five or six days before you made up the letter yourself, and put Mr. Joiner's signature on there with a rubber stamp?

A. No, sir, it was not.

Q. Didn't you testify to that the other day?

A. I testified I made the letter up, set it up in type and printed it from the original of Mr. Joiner's.

Q. From the original?

A. Yes.

Q. Do you say that Mr. Joiner ever wrote you a letter at any time where he used the word "Paramount" except in that one letter that the court permitted to go in just a few minutes ago?

A. Yes, sir, he did.

Q. Didn't you testify you put the word "Paramount" in there?

A. No, sir, I testified that I named the well, the Paramount well.

Q. Mr. Joiner had nothing on earth to do with calling it the Paramount, did he?

A. He didn't call it that yet.

Q. He never did call it Paramount, that was your language?

A. I termed that the Paramount well to distinguish it from other wells he was drilling.

Q. How many acres did you sell altogether, out of three or four thousand acres in the block?

A. 385, approximately.

Q. Under your oral contract with Mr. Joiner, you had the right to select the acreage close to the well, if your customers didn't?

A. Yes, sir.

Q. Did you do that?

A. Yes, sir.

Q. You gave each man, as he sent in the order, the closest acreage you could get to the well?

A. That is correct.

Q. Did you make any false statement to anybody in these letters?

A. Not knowingly, no, sir.

Q. He asked you about two wells east of Ballinger; I will ask you if there are not two separate fields within ten miles of Ballinger, east and northeast of the town at the present time?

A. I don't know that that is a fact.

Q. Haven't you been to those fields?

A. I have been to McCulloch County, but not over in the other county.

Q. Where did you get the information on which you put on your separate map, of two fields east of Ballinger?

A. On the railroad commission map.

Q. Of those two fields, do you know that one of them is a field, and has already produced more than a million barrels of oil, and the other one is a new field that has three or four producing wells in it now, three or four miles from the first field, do you know that?

A. I have heard that, I don't know it, I haven't been there.

Q. Something was said in the circular about this being in the center of oil producing territory, what are the facts as to whether or not there are oil wells in every direction from this field that you were drilling?

A. They brought a new one in in McCulloch County last week.

Q. How far from this well?

A. Approximately eight miles.

Q. Which direction?

A. South, I believe.

Q. And this well was in what part of the county, the well that you were drilling was in what part of the county?

A. It is right at the edge of the county, just across the river from Coleman County.

Q. Was it the northern part of McCulloch County?

A. Yes.

Q. In the northern part?

A. Yes, the extreme northern part of McCulloch County, right on the river.

Q. Now, in respect to this Exhibit 4, please tell the court just when it was that you know—that Joiner ever saw that exhibit?

A. Will you tell me which is Exhibit 4?

Q. That is the circular that has Mr. Joiner's letter turned over to one side, and four pages, has C. M. Joiner Paramount development on the front of it.

A. Now, your question was what?

Q. My question is, when do you know of your own knowledge that you first presented that to Mr. Joiner, or that Mr. Joiner ever saw it first, of your own knowledge?

A. This one, I don't know whether Mr. Joiner ever saw it or not.

Q. You didn't mean that particular piece of paper, but you mean that particular circular?

A. I mean that particular circular.

Q. In other words, you don't know that he ever saw it?

A. I don't, no, sir.

Q. So, it was not shown to him before you sent it out, was it, is that correct?

A. That is correct.

Q. Now, one of those exhibits there, on No. 5, you said, was a letter-head?

A. That is right.

Q. And No. 6 that he offered here was a letter written on a letter-head?

A. That is right.

Q. Did Mr. Joiner have anything to do with the preparation of that letterhead?

A. No, sir.

Q. What are the facts, as to whether or not you are a licensed broker?

A. That is a fact.

Q. Have you ever bought any acreage from anybody. else except Mr. Joiner, or Joiner Leasing Company?

A. I have, yes, sir.

Q. As a broker, do you use your own methods of making sales, and pick your own customers and make your own terms?

A. That is right.

Q. Did Mr. Joiner ever tell you that you could not sell that acreage for less than $15.00, or that you had to sell it for more than $15.00, or that you had to sell it at $15.00?

A. The only question of price was the amount I was to pay for it.

Q. Now, the map that has been used there, which is a section of the other map, I see you have stated is a copy of the official map put out by the state of Texas, and copied by the Oil Journal, published some place in Oklahoma?

A. Published in Houston, Texas.

Q. Published by whom?

A. By the Oil & Gas Journal.

Q. Oil & Gas Journal?

A. Gulf Publishing Company.

Q. You don't know whether Mr. Joiner sent out anything like that or not, do you?

A. I don't know.

Q. Now, the wells that were close up there, one of them I believe three-quarters of a mile, another a mile and a half, that were gas wells, is that generally conceded to be a sign of the location of oil nearby?

A. It is.

Q. You were not present at any time when Mr. Joiner was talking to Mr. Anthony, were you, prior to the time you sent out your literature?

A. Not in the making of that contract, or anything like that.

Q. He asked you about a telegram sent there. Do you know whether or not the statements contained in that telegram were true?

A. I believe they are, yes, sir.

Q. The well was down five or six hundred feet at the time?

A. I believed it was.

Q. You thought it did have a gas showing?

A. I believed that to be a fact.

MR. MILWEE: We object to that, he asked him if he knew it was true.

THE COURT: No, he asked him if he believed it was true.

Q. Did you, at any time, as a broker, or otherwise, in connection with C. M. Joiner, or C. M. Joiner Leasing Company, on its behalf, and on your own behalf, or in any way whatsoever, in this particular field, or prospective field, ever sell or offer for sale any interest in the field out there?

A. No, sir.

Q. Did you offer for sale anything other than a straight lease on a piece of land that was segregated from other

pieces of land, and the description of which was furnished to your client?

A. And recorded in McCulloch County, Texas.

Q. You have stated that you were furnished some names by Mr. Joiner. How long prior to the time of selling anything in this location, had you been furnished those names?

A. Three or four years.

Q. In other words, there was a list that Mr. Joiner had that was available to other people, anybody could get a list of names to send out prospective literature to?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And at the time you got it from him, you got it because of the fact you were considering making collections for him, wasn't it?

A. That is correct.

Q. He did not give you any list especially in regard to this location there, until you circularized or mailed anything, did he?

A. He never did suggest that I send anything to any person.

Q. Did you sell any kind of security whatsoever with reference to this field, other than a straight lease?

A. I have never sold any kind of security except a full 7/8ths oil and gas lease and in each instance, I had it recorded in the county before mailing it to the client.

Q. Now, as a matter of common knowledge, I will ask you whether or not the map you have there showing all those various fields within the next county, and McCulloch County, whether or not that does, within your knowledge, correctly represent quite a number of fields that was there within a short distance of this field?

A. I know that that is a fact, there is more fields than shown on that map, because the map is three years old, and

there have been numerous wells brought in in that area since that time.

Q. Did you falsify the map in any way to try to sell any leases in this territory?

A. No, sir, that light spot I spoke of must be ten or twenty miles from the well, and naturally, if it got there, it was through the process of making, and it was not put on there with the intent to deceive anyone, if it had been, it would have been close to the well, and not twenty miles away and over in another county.

Q. Do you have any knowledge of the particular mistake made in that until it was called to your attention by counsel?

A. I immediately corrected it after it was called to my attention and never used a single one after it was called to my attention.

Q. Are you doing anything at the present time to sell any additional acreage in the neighborhood?

A. I am not.

Q. Do you know whether Mr. Joiner is?

A. I don't think he is.

Q. Do you know whether or not he has paid more than the amount he contracted to pay for the drilling of the well down to 2,000 feet, until it is actually drilled?

A. The driller told me that he had overpaid him approximately $1,000.00.

Q. Do you know whether or not he has made another contract with a third person to go in there and drill the well on down?

MR. MILWEE: I didn't go into that on direct examination.

THE COURT: Well, he can ask that, he has elicited some answers that are hearsay, but I didn't pay any attention to them. they go into the record if they are not objected to.

MR. MILWEE: I ask that it be stricken.

THE COURT: All right, I will strike it.

Q. Do you know how many fields there are actually in operation at the present time in the county of McCulloch?

A. No, sir.

Q. Do you know how many there are in the county just across the river from McCulloch, the one that is studded thick with oil fields?

A. I don't believe you could count them over there.

Q. The word "Paramount" was a word of your own selection?

A. That was the name I gave it to distinguish it from other projects of Mr. Joiner's.

Q. Now, it is stated in the plaintiff's pleadings that there is no production south of the well, what are the facts as to whether or not there is production south of the well?

A. I haven't been to the well, but I am pretty positive there is.

Q. Is it a matter of common knowledge that there is a well?

A. It is a matter of common knowledge.

MR. MILWEE: We object to this line of testimony, that is hearsay, if they want to prove there is production out there, they can prove it in the proper way.

THE COURT: The witness says he has never been down there to the well.

Q. How close to the well have you been?

A. Which well do you mean?

Q. The new well brought in in McCulloch County.

A. Last week?

MR. MILWEE: We object to that, the record does not show any new well has been brought in in McCulloch County.

MR. FRANK: It is a rather technical objection.

A. The railroad commission reported sixty-one barrels on the gauge in the new well in McCulloch County, brought in last Friday.

Q. That is a matter you keep up with as a broker?

A. As a broker, I am very interested in any production or new fields around any leases I may own.

MR. MILWEE: He is inquiring about matters that have transpired since the filing of the suit.

MR. FRANK: He said there was no oil south of there.

THE COURT: Well, if he did find some oil since the suit was filed, it might be beneficial to the defendant, where they prognosticated that oil was around, and there was some testimony that he brought in a dry well afterwards.

MR. MILWEE: I don't think Mr. Johnson is competent to testify to it.

THE COURT: Well, he has given the source of his opinion.

Q. Now, in respect to the dry holes, I ask you what the facts are as to whether or not in and near practically every field, there are some dry holes?

A. That is a fact.

Q. Do you know what the percentage of dry holes is in Texas, to the number of producing wells?

A. In strictly wildcat?

Q. Yes.

A. I don't know the percentage, but it is high.

Q. Have you at any time sold any certificate or interest in any of these wells?

A. No, sir, I haven't sold any, or offered any.
Q. Or any participation in profit sharing agreements?
A. I have sold none and offered none.
Q. Any fractional undivided interest?
A. I have sold and offered none.

MR. MILWEE: I move those answers be stricken, those are conclusions of law as to whether or not he sold them.

THE COURT: I think he has the right to ask him, as bearing upon certain matters in this suit. He contends if a man sells a lease, that he does not violate the securities and exchange law.

Q. Have you sold any kind of interest or securities arising out of or in connection with the sale of the assignments of oil and gas leases in the Joiner-Paramount development?

A. No, sir.

Q. Have you sold any kind of securities in connection with what you call the Joiner-Paramount development?

A. No, sir.

Q. When you furnished the names of your customers to Mr. Joiner, what are the facts as to whether or not that was furnished in order to check the accounts of deals which you had made, that is, was there a money difference between your books and his, and you furnished him the names in order to check up and see what amount had been sold?

A. There was a difference, it was this way, I sold for $15.00 per acre, ten percent discount for cash, or payable monthly. When it was a cash sale, Mr. Joiner allowed me five percent discount on my purchase, and those names were furnished at that time to show whether the purchaser paid cash or paid in installments. In other words, I paid $8.80 less five percent, where they take a ten percent discount, and where they paid out on the installment, I paid $8.00 per acre, and collected $15.00.

C. M. JOINER, being first duly sworn, examined in chief by Mr. Milwee, testified as follows:

Q. State your name and address, please?

A. C. M. Joiner, 4637 Mockingbird Lane, Dallas, Texas.

Q. Are you the president of the C. M. Joiner Leasing Corporation?

A. Yes, sir.

Q. State whether or not, by virtue of stock ownership or otherwise, you are in control of that corporation?

A. A stockholder, yes, sir.

Q. Do you control the corporation?

A. No, sir, I don't individually, I haven't got enough stock to control it, but I have the management of it.

Q. Are you the directing head of it?

A. Yes, sir, that is right.

Q. Who were the officials of that corporation?

A. Myself, and my wife, and May Hayworth.

Q. State what the authorized stock of the corporation is?

A. $5,000.00.

Q. Are the other officers you named stockholders in the corporation?

A. Yes, sir.

Q. Other than those, who else owns stock in the corporation?

A. There is only one, a fellow named Shuman.

Q. How much stock do you own?

A. I couldn't tell you offhand, one hundred and fifty shares, I think it is, $1500.00 worth. I don't like to state offhand, because I haven't got the books here.

Q. In what business is that corporation engaged?

A. Well, in buying and selling leases and royalties, and developing for oil.

Q. I wish you would state whether or not for the past two years the corporation has had any income?

A. Well, it has.

Q. From what source has it derived that income?

A. Sale of leases and rentals, and some sales—I couldn't state the whole thing, all of the records are here.

Q. As a matter of fact, hasn't it derived its income largely through the sale of oil and gas leases?

A. I would say it has, yes, sir, the majority of it, probably, oil and gas leases.

Q. Was it a corporation engaged in the drilling of wells?

A. Engaged in the drilling of wells?

Q. Yes.

A. Yes, sir.

Q. State the last well the corporation drilled?

A. McCulloch County, the one they are drilling now.

Q. How much acreage does the corporation own in McCulloch County?

A. Since I made this last deal for the finishing of the well, I have less than one thousand acres.

Q. How much did the corporation own originally when it first acquired the acreage?

A. I think it was 3,002 acres.

Q. From whom did you acquire that acreage?

A. From Mr. Anthony.

Q. What consideration did you give Mr. Anthony for the three thousand acres?

A. I would say practically nothing except to drill a well, I furnished some money for assembling the leases, that was about all the consideration.

Q. At the time you made the contract with Mr. Anthony for the drilling of the well, did the corporation have any funds with which to drill it?

A. I didn't catch that?

Q. At the time the corporation made a contract with Mr. Anthony for the drilling of the well, did the corporation have funds sufficient to drill the well at that time?

A. No, sir.

Q. How did you propose to obtain the funds with which to drill the well?

A. Well, I expected to sell some leases, and I expected to put some money in, and my wife put some money in. I always see that I can drill a well if I start it.

Q. Would you say that you expected to principally obtain the money from the sale of leases?

A. I would say that, possibly I did, the principal money that was raised from the sale of leases.

Q. Did Mr. Anthony approach you with respect to this acreage in McCulloch County, or did you first approach him in respect to it?

A. He came to me, I think.

Q. You then entered into a contract with him?

A. Yes, sir.

Q. What information did Mr. Anthony give you with respect to the locality where that acreage was in McCulloch County?

A. Well, I saw a map, a geological report, made by Mr. Anderson, and I knew the country pretty well, I ran cattle over that country at one time.

Q. I asked you to state whether or not the map Mr. Anthony showed you, showed any oil wells on that map, or, rather, showed that any wells had been drilled?

A. I was informed that two or more wells had been drilled there, but I don't remember whether the map showed it or not. One of them was, I think, about a mile north, Miss Annie said it was about three-quarters of a mile, they estimated it. This was just reported to me—

Q. That is not responsive. Mr. Joiner, as a matter of fact, didn't the map Mr. Anthony showed you show on the very leased block a dry hole?

A. No, sir, I don't believe that map showed those wells, but I knew about those wells being drilled there.

Q. How many wells had been drilled?

A. Two is all I remember of, and they were a mile or more from my location.

Q. Those wells had been producing oil, had they?

A. Only gas, I understand. One of them, on the Miller tract, I understood, produced some oil, they were shallow wells.

Q. I wish you would state to whom you have sold the oil and gas leases in the Joiner Paramount block in McCulloch County, Texas?

A. To whom?

Q. Yes.

A. I gave you a list of them, I couldn't tell you the names of them. You will have to talk a little louder, I can't hear you very good.

Q. You have a list of the parties to whom you sold them to, here with you?

A. Yes, sir.

Q. Will you produce that?

A. It is in my papers, in that top part there. I have furnished you this, I don't know how many times, but I brought it along. I have a copy of all of the leases here, and there was a tabulated statement, I furnished it to you.

Q. You did not find a complete list?

A. No, but I furnished you that. I know about the amounts.

Q. Mr. Joiner, you are acquainted with Mr. John T. Johnson?

A. Yes.

Q. I wish you would state whether or not you have sold Mr. Johnson any oil and gas leases out of the Joiner-Paramount block in McCulloch County, Texas?

A. The company has.

Q. And what price did you sell those leases to Mr. Johnson?

A. I sold them to him at $8.00, and he was to have leases around the well.

Q. Did you enter into any agreement as to how many leases you were to sell Mr. Johnson?

A. No, sir, I don't think he said how many he would want.

Q. I wish you would state the manner in which those leases were issued to Mr. Johnson?

A. Well, in the regular way, by assignment.

Q. Did he buy any large block of oil and gas leases from you, or would he purchase from time to time?

A. He would just purchase from time to time.

Q. How would he pay you for those leases?

A. Well, he paid the same as usual, and he paid for them as he got them, that is, he was supposed to, I think he got a little behind once, he was to pay for them when they were issued to him.

Q. You don't have any information with you that shows the total number of oil and gas leases you sold to Mr. Johnson?

A. It is a little less than four hundred acres, I think, the way we figure it out.

Q. During what period of time did you sell those leases to Mr. Johnson?

A. Well, I will say from the latter part of March, until along in September, probably, of 1941.

Q. March, 1941?

A. Yes, I think I got this assignment sometime in March, it was after the 12th, the original lease was dated on the 12th of March, 1941, and the assignment was made to me soon after that.

Q. State whether or not you know what Mr. Johnson did with those leases after they were assigned by the corporation?

A. Only what I heard.

Q. What did you hear?

A. He re-sold some of them, I am pretty sure of that.

Q. To whom did he re-sell them?

A. I couldn't tell you that.

Q. How did it come to your attention that you knew he had re-sold them?

A. I think he told me he was selling them.

Q. Have you produced at this time your duplicate deposit slips of the C. M. Joiner Leasing Corporation?

A. Yes, sir, I have them all right here. You will see that I did not have to depend on my selling leases to drill that well, if you will go through that.

Q. These will be marked "Plaintiff's Exhibits 15 and 16", I hand you, and wish you would state what they are?

A. Well, that is the deposits of the C. M. Joiner Leasing Corporation, duplicate deposits.

MR. MILWEE: Your Honor, I don't want to put in the record all of these deposit slips, but I would like to offer and read certain ones?

A. I would like to state that corporation was not active for several years, up until March 1, and all those deposits that go to this transaction would be after March 1, 1941.

Q. I hand you a deposit, referring to Exhibit 16, deposit slip, I will ask you if it is dated March 28, 1941?

(Instruments marked "Plaintiff's Exhibit 15 & 16")

A. Yes, sir.

Q. And it shows on there, read what it shows?

A. Miller, $135.00, Miller Leasing Corporation, McCulloch County.

Q. Miller Leasing Corporation, McCulloch County sale, $135.00, is that right?

A. That is the way that shows.

Q. Can you state how the corporation came to get the information shown on there?

A. Where's that?

Q. Right there, money received from the Miller Leasing Corporation?

A. Well, he paid that either in cash or check or something, I suppose. In making the deposit, I always required them to put that on there.

Q. The next deposit is dated March 31, 1941, I will ask you if it is not a fact it does not state Miller Leasing Company, F. M. Holland, $135.00, Miller Leasing, Harry Wicks, $12.50?

A. Yes, I guess that is the way it shows there.

Q. Will you state how the corporation got the information of those names on that slip?

A. No, I couldn't.

Q. Who made out the deposit slips, who prepared them?

A. My wife.

MR. MILWEE: If Your Honor will bear with me a moment, there are one or two names that I would like to read that I am satisfied are in these deposits.

THE COURT: You could get those at recess.

Q. The deposit slip of May 22, 1941, shows deposit by the C. M. Joiner Leasing Corporation in the amount of $38.00, with the name J. L. Brooks, $14.25, and F. J. Criffin, $13.75 appearing thereon.

A. Yes, sir, that is the way it was made by the deposit.

Q. Deposit slip May 6, 1941, by the corporation, shows from the Miller Leasing Company, McCulloch County lease, Margaret Martin, $135.00, is that correct?

A. I suppose so, that is the bank record, I just took it as correct.

Q. April 10, 1941, McCulloch lease, Miller Leasing Company in the name of A. C. Charges, $12.15, Mary Helmore, $67.50, May G. Thompson, $7.50, does that appear on the deposit slip?

A. That is the way it appears, I don't know where it came from, of course.

Q. You say you don't know where it comes from?

A. No, sir, I am just taking that as correct.

Q. These are the deposit slips of the corporation?

A. That is the duplicates.

Q. Do you know who those parties are, whose names appear on those slips?

A. No, I don't know, I saw one I thought I knew, this $135.00.

Q. Is that Margaret Martin?

A. No, I can't recall it just now, Katherine somebody.

Q. You knew that during the period of time from about March 1, 1941, through to September, that Mr. Johnson was engaging in selling these leases to the public, didn't you?

A. I knew he was selling leases.

Q. Do you know the price he was asking for the leases?

A. Well, I am not positive, but I understood it was $15.00, of course, he fixed the price at anything he wanted to sell them at.

Q. State whether or not it is a fact that on numerous times when Mr. Johnson paid you for leases, he would hand you checks payable to him by other parties?

A. I think that has happened, I am sure it has a few times. Maybe many times, I couldn't say.

Q. As a matter of fact, you knew those parties were parties who had purchased leases from Mr. Johnson?

A. I don't know that I did, but Mr. Johnson came to me, I endorsed the check so he could clear it, and give credit for it, I have done that for him several times, he would have an out-of-town check where it would take eight or ten dollars, and he said he couldn't get credit for it until it was cleared, sometimes it takes eight or ten days. For several years, I have endorsed checks that way for him.

Q. Other than sales of leases to Mr. Johnson, did you sell leases to anyone else, up until July 24, or offer for sale?

A. July 24.

Q. 1941, in the McCulloch County block?

A. I don't think I did, up until that time, I don't remember, if I did probably it was someone here.

(Exhibits 17, 18 and 19 marked for identification.)

Q. Did you send out any literature to the public offering leases for sale?

A. Yes, sir.

Q. Do you remember when you first offered the leases for sale?

A. July 21, I think, 1941. I mailed you a copy of it and got a receipt for it.

Q. I hand you what has been marked "Plaintiff's Exhibit 17, 18, and 19", I wish you would examine those and state what those are?

A. Well, that is a form letter, I guess, I sent out, and that went more to the other well, I think. I don't know whether I mentioned McCulloch or not. I don't think I did in that letter. In one of them, I think I mentioned both. I am going to rely on that record as given to you; it would be impossible for me to remember every item.

Q. Can you identify those letters as being exact copies of the letters you sent to the public?

A. Well, I think so.

Q. Who did you mail those letters to?

A. I couldn't tell you that. I furnished you a list.

Q. But these are exact copies of letters you posted for mailing at Dallas?

A. I think so.

Q. To approximately how many people did you send them?

A. Oh, about one thousand, I think.

MR. MILWEE: I offer the instruments in evidence.

(Marked "Plaintiff's Exhibits 17, 18 and 19.")

Q. Mr. Joiner, were these letters mailed to parties residing in states other than the state of Texas?

A. Some of them were, yes, sir.

Q. Did you engage—

A. —I think most of them were. I furnished your office with an exact copy of each one of those before I mailed

them out, I supposed if there was anything wrong with them, you would tell me.

MR. MILWEE: I would like to read these letters at this time.

(Reading letters.)

Mr. Joiner, I hand you what has been marked "Plaintiff's Exhibit 20", I wish you would examine that and state what that is?

A. That is a copy of what was in my office, and I take it that it is correct.

Q. Exhibit 20, I will ask you to state if that is not the list showing the sales by the C. M. Joiner Leasing Corporation, out of the McCulloch County block from July 16, 1941, to September 10, 1941, which you furnished to the Commission through me.

A. That is the list furnished you, yes, sir. I am satisfied that is correct.

Q. I will ask you to state, Mr. Joiner, if it is not a fact that these three letters, Exhibits 17, 18 and 19, were sent to, among others, the people shown on Exhibit 20?

A. I take it that they were.

Q. Now, Mr. Joiner, I hand you Plaintiff's Exhibit 21, I wish you would state what that exhibit is?

A. Well, I just can't tell what that is. I want to make a little explanation there, but I don't know that it is material.

Q. State what it is, and then make your explanation.

A. I am satisfied that is furnished out of my office.

Q. Is Exhibit 21 a list of the persons to whom the Miller Leasing Company sold leases in the McCulloch County block up to September 10, 1941, that you furnished to the commission through me?

A. That was furnished by my office, I suppose.

Q. You furnished that to me?

A. I suppose so; I am satisfied it is correct, I am going to accept it as being correct, it came out of my office.

MR. MILWEE: I offer these exhibits in evidence.

(Marked "Plaintiff's Exhibits 20 and 21.")

Q. Now, Mr. Joiner, the parties listed on Exhibit 20, show those were lease sales made by the C. M. Joiner Leasing Corporation for the period July 16, 1941, to September 10, 1941. That is not a complete list of the sales of the C. M. Joiner Leasing Corporation?

A. No, but at the time this was furnished, that is correct. The Miller Leasing Company did not give us the control of those, but just furnished us the name, they didn't give what county, he furnished that in order to show that he was correct in the amount that he had paid.

Q. Now, Exhibit 21, the one you just referred to, where you said Mr. Johnson, he was the Miller Leasing Corporation?

A. Yes.

Q. Now, Exhibit 21 shows the names and addresses?

A. Yes, sir.

Q. You had the addresses yourself?

A. You wanted them, and my wife went through everything we had, and tried to find how many names we had that had been sold. It took me two days to find that.

Q. Did you make that from your records?

A. Well, we took the list he had, and went through our list of names, and we found those names that we had sold to.

Q. How did the corporation get the names of the parties that the Miller Leasing Company had sold to?

A. He furnished the names, my wife went through the list of names we had, and worked a couple of days to find out how many, if any, he had sold. That is the way it was gotten up. That came up on a settlement where there was some discrepancy in our books and Mr. Johnson's.

Q. Mr. Johnson had furnished you all along the names of the parties he had sold these leases to, had he?

A. No, sir.

Q. In your letter, Exhibit 17, July 24, that is a considerably long time before you furnished me this list. I will ask you to state whether or not it is a fact that this letter shows—this shows the parties who now have a lease around one or both of these locations?

A. Yes.

Q. How did you have the names of these parties who purchased around one or more on both of these locations?

A. I was satisfied it would read the same that I had bought there.

Q. On July 24, 1931, that is the first time you made an offering direct to the public; prior to that time, Mr. Johnson had been selling, is that correct?

A. I think that is correct.

Q. Mr. Joiner, who selected the leases you sold to the public?

A. Why Miss Hayworth, I told her to select the ones, unsold leases.

Q. Who is Miss Hayworth?

A. That is secretary of the company.

Q. Secretary of the corporation?

A. Yes, sir.

Q. Mr. Joiner, prior to entering into a contract with Mr. Anthony, for the oil and gas leases in Joiner Paramount Block in McCulloch County, Texas, I will ask you to state what investigation you made of that area?

A. I examined the geological map, structure, and I knew all through that country was an oil country, we were liable to pick up a field anywhere. There have been two fields brought in since I started the McCulloch County well, ten or twelve miles of it one of them is McCulloch and the other field is Coleman. That will be a great producing territory, in my opinion.

Q. Did you visit that area out there prior to the time you entered into the contract for these leases from Mr. Anthony?

A. In connection with this deal?

Q. Yes.

A. No, sir, I really can't go to the oil wells very well.

Q. How often have you visited the location out there when the well is drilling?

A. I haven't been able to but once.

Q. You have been there one time?

A. Yes, sir.

Q. When was that, Mr. Joiner?

A. Well, I couldn't say, but I think it is the date that telegram was sent, if you will notice that, I spent the night at Brady.

Q. Plaintiff's Exhibit 2, is this the telegram you referred to?

A. While I was there, I am satisfied I was out at the well that day, but Mr. Anthony was not there when I went out to talk to the driller. Of course, I don't know where oil is any more than anybody else.

Q. Did you send that telegram to Mr. Johnson?

A. No, sir, but Mr. Anthony did. Mr. Johnson wanted the telegram how the well was, and as I remember, I told Mr. Anthony to send one, as to the depth and condition of the well.

Q. This telegram was sent with your knowledge and authority?

A. Well, yes, sir, I instructed that to be sent.

Q. That is the only time you have been out to the well?

A. Yes, sir, the head of the companies don't go to the wells if they are drilling, rarely ever do.

Q. Do you know for what purpose Mr. Johnson wanted that telegram that he requested you to send?

A. No, sir, I would have sent that to anybody that would have requested it. Anybody that had a lease out there,

or was interested in buying one, would be interested in knowing the depth and condition of the well.

Q. Was Mr. Johnson engaged in selling leases to the public at that time?

A. He was buying leases from here, I think he was selling them, I wouldn't swear that he was.

Q. Well, you know as a matter of fact that he was selling leases?

A. I am convinced in my own mind, if that is good testimony.

Q. Have you sent out to the public any literature, Mr. Joiner, other than the three letters we have just identified and discussed?

A. No.

Q. No general circular letter?

A. No, unless I might have sent an answer to an inquiry or something of that kind, I didn't send out any sales letter.

Q. I hand you Plaintiff's Exhibit 5, and ask you to state if you have seen that before?

A. Yes, sir.

Q. When did you see it, Mr. Joiner?

A. Well, it was after Mr. Johnson had said he would send out, and he had been selling leases before I saw that.

Q. You saw it during the period of time that he was engaged in selling oil and gas leases in the Joiner Paramount block?

A. I don't think he was through selling when I saw that, I know he wasn't.

Q. You saw the plat on the Circular, Exhibit 5?

A. Yes, sir.

Q. Did you furnish Mr. Johnson with the information from which that plat was made, or was it furnished at your direction?

A. Well, I couldn't say as to that. The original lease was taken in the name of Mr. Anthony, in order to get the lease in bounds, and so forth, I think Mr. Anthony furnished

that to Mr. Johnson, he furnished it to the man who made this plat, I would have furnished it to him, if it had been necessary.

Q. As a matter of fact, after it was prepared by Mr. Johnson, didn't Mr. Johnson furnish you with copies of it?

A. No, sir, not of that, I don't think so, I think it was sometime afterwards.

Q. What record did you use to keep the corporation—the corporation have, to show the location of the leases that had been sold?

A. Miss Mary, who made out the leases, would mark every lease sold in red, and I furnish you the original map showing how she kept it.

Q. Wasn't that marked in red on this plat here?

A. Yes, sir.

Q. How many leases you had sold?

A. On this part of the plat, yes.

Q. Mr. Johnson furnished you with that?

A. Well, we got it, Mary or some of us got it. I used that part of it, but I never did use the other, the ones showing the relation of the oil wells.

Q. Mr. Joiner, I wish you would examine Plaintiff's Exhibit 4, and state if you have seen that before, and when?

A. I never saw that until this case came up, I am quite sure of that.

Q. You mean to tell the court that you never did see this letter dated December 11, Miller Leasing Company, Dallas, Texas?

A. No, I didn't because I want to call your attention there to the fact that this letter is dated December 11, 1940. That was over three months before I ever secured any leases in McCulloch County.

Q. Isn't it a fact that at that time you were discussing the possibility of securing those leases with Mr. Anthony?

A. No, sir, I never thought of it, Pecos County was the place I expected to drill the next well.

Q. Did you ever write such a letter as that?

A. Well, I will take Mr. Johnson's testimony on that, he says I didn't, and I am sure I didn't. That is an old letter, and Mr. Johnson testified away back five or six years ago that he made some changes in it, and used it. Of course, I would not have written letter December 11, not even having any idea at that time of drilling a well in McCulloch County.

Q. Mr. Joiner, do you recall having made an affidavit for the commission in connection with the investigation of this case; do you recall me having called on you last fall?

A. And got an affidavit from me?

Q. Yes.

A. Yes, sir, and I want to state when you got that I was just in a fainting condition, but I did get in the car and go down to the bank and acknowledge it, and I called you up as soon as I could read it, and told you that was not my language, and I wanted to substitute another one in my own language. I asked you if you would return that. You said you didn't know whether you could or not, but you would accept my new one.

Q. Prior to the time you executed the first affidavit, I had conferred with you several times with respect to the facts concerning this matter under investigation?

A. Yes, sir, but there were so many changes made. You remember when you read it over, you read it over to me, I couldn't tell, I was just—I couldn't tell what you were reading, hardly, I was so tired. You got down on the floor and you used probably fifty sheets, the sheet that had the correction on it, I think that is where the mistake was made.

Q. This is the affidavit?

A. Yes, sir, that is it. I signed it. Where is the other one, the one I corrected?

Q. I have it.

A. Anybody in the world reads that letter will know that was not my language. I have never used the word "Paramount" but once since that well was started, that is in a letter to Johnnie Johnson, I just didn't use it.

MR. MILWEE: I want to introduce certain parts of this affidavit.

MR. FRANK: I have no way of knowing what he is going to introduce, unless he will mark it or something to let me know what it is. I think if he wants to ask about any particular part of it he should call it to Mr. Joiner's attention.

A. I signed that, I am mighty certain I done it.

Q. I will ask you whether or not you stated in this affidavit the following—

A. I am going to disown that entirely, there was no letter sent Mr. Johnson at that time.

Q. You said you made this affidavit, the original, the first one is dated October 15, 1941, is it not?

A. Yes, sir.

Q. Then you state that some errors are made in that affidavit that you objected to, you didn't think was the right language, is that correct, and you made another affidavit?

A. Yes, sir.

Q. I wish you would examine this, and state what it is?

A. Well, that bears my signature there, I am really not able to read it.

Q. That is your signature?

A. Yes, sir.

Q. When is it dated?

A. I guess the next day, wasn't it?

Q. No, sir.

A. The 3rd day of November.

Q. The 3rd day of November?

A. I said—didn't I phone you that night or the next morning?

Q. I don't recall the exact time. Is this the affidavit you subsequently made?

A. I don't know, I am not able to read it now. It is my signature. If there is anything in there you want me to testify to, go ahead.

Q. Isn't it a fact that in this affidavit dated November 3, 1941, the following statement is made, "There is annexed hereto and marked Exhibit 1, a photostatic copy of a letter which I handed to Mr. Johnson, of Miller Leasing Company in December, 1940, agreeing to sell him an oil and gas lease near my next well to be drilled."

A. That is the agreement anyway.

Q. And that is the letter?

A. No, sir.

Q. That is the letter right there that you referred to, that you handed to Mr. Johnson of the Miller Leasing Company agreeing to sell him leases, is it not?

A. No, sir.

Q. What letter were you referring to on this affidavit?

A. I don't know that I gave him any letter, but it was the conversation, and that would go just the same as a letter. That was the agreement, the next well I would drill that he might have leases around the well at $8.00.

Q. You deny that you ever gave him a letter, then?

A. You know, I am not positive about that, not giving some kind of memorandum.

Q. Will you say that that was not the letter you gave him?

A. Yes, sir, I am sure I didn't give him that letter, I never heard of the McCulloch block at the time that letter was written.

Q. Mr. Joiner, I will ask you to state whether or not you know there is any production being obtained, or was being obtained in McCulloch County during the time you were engaged in the sale of these leases to the public?

A. No, sir, I don't know what was producing.

Q. Sir?

A. I don't know what it was producing.

Q. Do you know of any production at all at that time?

A. No, sir, I don't know.

Q. I will ask you to state whether or not you know how many dry holes had been drilled in the area surrounding the Joiner-Paramount block in McCulloch County, Texas?

A. No, sir, but I would not have paid any attention to it, there was a hundred wells in East Texas before I drilled the biggest field in the World.

Q. You didn't make any investigation to determine how many wells had been drilled in the vicinity?

A. There were a few wells from 1,000 to 1,200 feet deep, one of 800 feet, I think, I didn't go into that.

CROSS-EXAMINATION

By MR. FRANK:

Q. Mr. Joiner, how old are you, please, sir?

A. I have always refused to tell that until recently.

Q. We would like to know.

A. I am in my eighty-third year.

Q. You are past eighty-two?

A. Eighty-two in March last.

Q. The three letters that he referred to dated July, August, July 24, August 15, and August 30, which were read to His Honor, each one has a paragraph in quotation, that is in quotation marks, reading, "Because these securities are believed to be exempted from registration, they have not been registered with the Securities & Exchange Commission; but such exemption, if available, does not indicate that the securities have been either approved or disapproved by the commission, or that the commission has considered the accuracy or completeness of the statement of this communication." Where did you get that language?

A. I got it from the commission.

Q. From what commission?

A. Which?

Q. From what commission?

A. The Securities Commission.

Q. Before sending out the information of these three wells, what did you do with respect to notifying the commission that you were going to send that out?

A. Well, they wrote me that I should file a copy of the sales letter of that kind twenty-four hours before I sent it out, I did that, and got a receipt from them each time.

Q. Got a receipt from the Securities Commission on each one of these letters?

A. Yes, sir.

Q. Did you send out any other sales letters except these three letters?

A. Yes, sir, that is all.

Q. Are the statements contained in these three letters absolutely true and correct?

A. I think so, or I would not have sent them.

Q. Did you have anything to do with calling the well you were drilling the Paramount well?

A. No, sir.

Q. This Exhibit 4 that he has shown to you here, tell us, please, when you first saw it, when was the first time you ever saw a paper like that?

A. What is that?

Q. That is—

A. You had better show it to me.

Q. That is Exhibit 6, a folder, C. M. Joiner, Paramount Development?

A. I am sure I never saw this until this case was filed.

Q. That is, you didn't see it until about February this year?

A. Yes, sir, or later.

Q. Did you ever send out a paper like that, in your life, through the mail?

A. Never did. That is not saying that the information was not correct, but I never sent out any high powered literature to sell a lease.

Q. Then Exhibit 5, that is a letterhead, on the back of which is a map showing in green and red ink on one page. On another page, what appears to be a location of the Joiner-Paramount Well, did you have anything to do with

the preparation of that, or of naming that the Paramount Well?

A. No, sir.

Q. Whose work was that?

A. I couldn't tell you who done that.

Q. Did you ever send out a single letter on that letterhead?

A. No, sir.

Q. You were asked about the telegram that was sent; I will ask you what the facts are as to whether every word in that telegram was true?

A. Well, taking the driller's report, of course, you have to rely on that, as to the depth, and he wrote it. I think I told him to send it however, I was present.

Q. The statement made by the contractor was that you were to go to the Ellenberger Lime, or 2,000 feet deep?

A. Yes, sir.

Q. Have you gone 2,000 feet?

A. We are at the Ellenberger now, we are not 2,000 feet.

Q. How much money, approximately, did you receive from all of the leases, or all of the leases around this well, on account of the sales made by the Miller Leasing Company?

A. Well, let me see. I don't know exactly. I have it here somewhere.

Q. Do you know approximately what it is?

A. Twenty-six or twenty-seven hundred dollars, I guess.

Q. How many acres did you sell?

A. I think it was less than that, because some of it was discounted, I would say $2,600.00.

Q. How much did you sell outside of what was sold by Miller Leasing Company?

A. Well, I said about $1,000.00.

Q. About $1,000.00?

A. Yes, sir.

Q. One of the exhibits that he has there shows 115 acres sold by you for about $700.00, did you sell some more after that?

A. No, sir, I believe that was about 150 acres.

Q. About 150 acres?

A. Yes, sir. I got in all, I would say, over $3,000.00, or about $3,000.00.

Q. How much money have you, up to this date, spent on that well?

A. Up to date I must have spent $6,000.00.

Q. $6,000.00?

A. Yes, sir.

Q. And you sold leases to the extent of about $3,000.00?

A. Yes, sir, that is about right.

Q. Where did you get the other $3,000.00, you say that was yours?

A. I can't tell you that, I couldn't tell you that.

Q. I notice there the second or third page on that pink sheet that he has, that bunch of pink sheets, deposit slips, D. Joiner, $125.00, who is that?

A. That is my wife. She had put in quite a lot of money there, and I put in some, we sold some other stuff.

Q. How many acres of leases does C. M. Joiner Leasing Company own in Texas, besides what is owned in McCulloch County, around this well?

A. About 15,000 acres.

Q. Has it sold any leases out there besides in McCulloch County?

A. Well, some, yes, sir.

Q. And has money from other leases gone into this well?

A. How is that?

Q. Has money from other leases gone into this well?

A. Yes, sir, I suppose so, I put it all in one account.

Q. In this deposit here—I haven't the time to run through all of these deposits—but I find here on April 5, 1941, D. Joiner, $125.00, is that your wife?

A. Yes, sir.

Q. And that went to the credit of the company, didn't it?

A. Yes, sir. I could tell you where a good deal of that money came from, I don't think anybody would be interested in knowing where I got my money. I didn't steal any of it.

Q. At any rate, nearly twice as much money has been spent on the well as was received through the sale of all of these leases?

A. I think so. I gave Mr. Anthony between $3500.00 and $3600.00, and several hundred for casing, and bought one lease out there, and I paid the contractor between $800.00 and $1,000.00, that is right recently.

Q. Now, after you had made your contract?

A. I haven't sold a lease since I paid that money, that came from other sources.

Q. You say you have not sold a lease?

A. No, sir.

Q. When was the last time you sold a single acre of lease around this well?

A. I couldn't give you the date, I have given away a few leases.

Q. When was the last time you sold a single acre of lease?

A. The records will show, I don't know just when it was, it has been some time.

Q. Have you sold any at all since the filing of this suit?

A. I sold one party, a party wired me for a lease, and he first wrote me and I didn't answer, then he wired me and said he wanted fifty acres. I wired him I could let him have it. I had the acreage made up and expressed it to him. I just thought I had better not use the mail, I had not been prohibited from doing it.

Q. How much did you get from that lease?

A. $5.00 an acre.

Q. How did you sell some of these people acreage at $5.00 an acre and get by this broker who was handling it on a wholesale basis, and you got $8.00?

A. Well, there was a difference in the location, would account for it. The leases I let the Miller Leasing Company have were immediately surrounding the drilling well.

Q. He had the right to select, did he?

A. Yes, sir.

Q. And did select?

A. Yes, sir, of course. I then sold leases, the leases I sold were further removed from the well at a lesser price.

Q. Now, in December, 1940, did you, yourself, know that you were going to drill a well in McCulloch County?

A. I never thought of it.

Q. And this letter that is dated December, 1940, that has the name of the Paramount lease in there, did you sign that letter at all in the form it is now?

A. No.

Q. You heard the testimony taken in a deposition where this gentleman explained what he did about that, did you?

A. Yes, sir.

Q. And this deposition is here?

A. Yes, sir, it is here.

Q. He testified in that deposition that it was an oral contract in December?

A. Yes, sir, I think it was, but I was not so positive about that, but what I had given him a letter.

Q. Counsel asked you if when you made a sale, you marked it on the map, and had in his hand that Exhibit 5. Is it your testimony that you ever, at any time, made your markings on one of these little exhibits here, or did you have a map, or your secretary have a map, on which she did make the markings?

A. No, sir, I never made any sales on that.

Q. That is this exhibit, or anything like that. Was that ever used in your office as a record on which the company marked off sales with red ink?

A. Yes, sir, that part of the map was.

Q. Was it on an exhibit of this kind?

A. No, sir, we had one of those in our office we used.

Q. That is, you had one of these small maps?

A. Yes, sir, Mr. Emery made that map and I was satisfied it was substantially correct, because he was very fine, and once worked for me.

Q. Something was said about the location of the two fields just east of Ballinger. Do you have any knowledge whether there are two fields just immediately east of Ballinger, six or eight or ten miles?

A. That is in Runnels County, and there is some production there, I have understood, but I haven't seen it.

Q. Did you or not, yourself, start to take a lease that was afterwards brought in on the F. A. Davis tract, five or six miles from Ballinger?

A. I was offered a block of leases there, but I didn't take it at the time.

Q. You didn't take it, but it did come in a producing field?

A. Yes, sir, I understood it did, I never saw it.

Q. Then two or three miles from there was a field that several years ago came in and still producing, is that right?

MR. MILWEE: Is Mr. Frank testifying?

A. I couldn't say positively about that.

THE COURT: Well, Mr. Joiner seems to be taking care of himself?

A. Thank you, Judge, I am in no position to testify, but I am going to do it.

Q. Mr. Joiner, it is set out there that you have been selling investment contracts in that company, is that true or not?

A. Well, no, I haven't been selling any.

Q. That you have sold certificates of interests or participation in particular sharing agreements, is that true or not?

A. No, sir, never did.

Q. It is charged that you have sold fractional divided interests in oil or gas rights, is that true or not?

A. No sir, it is not, as I understood it.

Q. It is charged that you have sold interests in instruments commonly known as securities, arising out of and in connection with the sale of oil and gas leases in the Joiner Paramount development located in McCulloch County, Texas?

A. That I sold leases?

Q. Have you sold any securities—

MR. MILWEE: That is a conclusion on his part.

A. I don't know.

MR. MILWEE: It is a conclusion of law.

A. They might say securities, that is what I want to know.

Q. Have you sold anything at all except leases?

A. That is all.

Q. Have you used any prospectus at all at any time, other than the three letters that have been introduced here, and identified, marked Exhibits 17, 18 and 19?

A. Just those letters that have been presented here.

Q. Mr. Joiner, what is the location of this well that you are drilling out there at the present time, as to whether it is in what we think is a good location to bring in an oil well?

A. Oh, I think so, it is surrounded everywhere, not far removed from producing oil. There has never been a good test made there, that I know of.

Q. Is there any direction that you could point from that well, that would not point toward a producer?

A. Well, I wouldn't want to say as to that.

Q. North, south, east and west, would hit an oil well, wouldn't it?

A. It would be pretty close to it.

Q. There is a great deal of oil out in Pecos County, beyond there, and a great deal north from there, clear up through the Panhandle?

A. Some of them are far removed from this well.

Q. Do you know how far the new well is that is south of your well now?

A. Well, I have figured with some people, and they figure it is eleven miles.

Q. And then there is another well?,

A. I believe it was Mr. Anthony I figured with.

Q. Does the bringing in of the new well decrease or increase the chances of your getting oil in the well that you are drilling at the present time?

A. No, sir, it is not so very near.

Q. If the oil is there, you will get it, and if it is not there, you won't?

A. Nothing but the bit will tell.

Q. Why was it that with the contract with Mr. Anthony to drill this well for $2.50 per foot, $1.50 of it to be paid as the well progressed until you got 2,000 feet deep, why was it you did not get this well completed last year?

A. You will have to ask Mr. Anthony.

Q. Was there ever a time at any time when Mr. Anthony called upon you, when you did not or could not pay him every cent that was due him?

A. Until I saw that he could not drill it or was not going to drill it.

Q. Was there ever a time when he called on you for money when you didn't pay him, when you actually didn't owe him anything?

A. There never was a day I owed him a dollar from the time he signed the contract until he quit.

Q. At $1.50 per foot, 1,275 feet would be $2,000.00?

A. Yes, sir. I don't think it was that deep.

Q. How deep was it?

A. I think it was 1,330 feet. We went to the bottom of the hole with casing, and that never lies, we measured the casing.

Q. How deep was it?

A. 1,330 feet.

Q. When did you put the casing in?

A. Two or three weeks ago. The well was only 1,380 sometime last Saturday, probably something over 1,400 now.

Q. What did the 1,300 feet of casing cost?

A. Well, the 800 was worth about $1.50 a foot.

Q. That would be $1,200.00?

A. Yes, sir.

Q. And the ten-inch—first ten-inch put in there, about one hundred feet put in there, I paid $130.00 for that. Of course, I had to haul it, and have it run.

Q. How much acreage did you have left, and unsold, at the time Mr. Anthony abandoned the well?

A. Well, I figured about 2,000 acres.

Q. How much of it do you have at the present time?

A. Under this last contract, whereby I gave Mr. Thomas half of the unsold acreage, half interest in the well, and $750.00, I more than paid him the cash, and I have given him quite a block of the leases, I haven't given him all.

Q. And you have already paid him, then, the contract price to complete that well 2,000 feet deep?

A. Yes, sir, because he was kind of short of money. I didn't think he would be, because he has an oil field out there, or two, nearby.

Q. What arrangements have you made to keep drilling until you complete the well?

A. I rented the rig from Mr. Anthony.

Q. On what condition?

A. $25.00 a week.

Q. What is your intention at the present time, are you doing what you can to complete that well?

A. Yes, sir.

Q. Do you have confidence that you will bring in oil there?

A. Yes, sir, I think it is a good location, of course, I am not absolutely confident.

MR. MILWEE: I didn't go into this on direct examination.

THE COURT: Well, it saves time to finish it up. He has the right to put him on. He is going into what you went into, and then finishing his case up, I see no impropriety in it.

A. I have all of the checks I gave Mr. Anthony, if you want to see them, thirty-five hundred and some odd dollars.

Q. Have you, Mr. Joiner, either by word of mouth, telegrams, telephone, letter, expressed, or in any other way at any time knowingly uttered anything that was false in regard to this well?

A. Never.

PHILLIP MAVERICK, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Milwee, testified as follows:

Q. State your name?

A. Phillip Maverick.

Q. Where do you reside?

A. Fort Worth, Texas.

Q. In what business are you engaged?

A. I am a petroleum geologist.

Q. Where are you now employed?

A. I am employed by the Securities & Exchange Commission office in Fort Worth.

Q. How long have you been employed there?

A. It will soon be four years, in August this year.

Q. State whether or not you are a graduate of any college or university?

A. I am a graduate of the Michigan College of Mines and Technology.

Q. What degree did you receive?

A. I got degrees, a Bachelor of Science and Engineer of Mines, and I majored in chemistry and geology.

Q. The courses you took, did that include the study of geology?

A. Yes.

Q. Are you a member of any professional society?

A. Yes, sir, I am a member of four. I am a member of the National Oil Scouts, and Landman's Association; associate member, I joined several years ago. I am a member of the American Society of Petroleum Geologists, I joined that association in 1924. I am a member of the American Institute of Mines, and Metalurgical Engineers, I joined that association in 1918. I am a registered professional engineer, and geologist, with the State of Texas. I registered with the State Board several years ago.

Q. Subsequent to your graduation, will you state briefly your experience as an oil and petroleum geologist?

A. My experience commenced with a position with the Texas Company. I scouted for several months, and thereafter I worked for them as geologist, I was located in San Antonio, spent some time in Mexico, and was transferred to the State of Texas. I was a geologist in San Antonio, and looked after the fault lime and my last job was division geologist for the Texas Company at Cisco, Texas, and McCulloch County came within my list of counties.

Q. After you left the Texas Company where were you employed?

A. I left the Texas Company in 1926, and moved to San Angelo, Texas, I took with me my assistant, a graduate of the University of Oklahoma, and went into the consulting business there.

Q. How long did you engage in the business of consulting geologist in San Angelo?

A. I was there until August, 1938, when I took this position with the Commission.

Q. Will you state briefly just what your work consisted of during that time?

A. Well, there was a large amount of it was surface maps, surface geology, and making maps, preparing maps, reports, and including sub-surface geology. I also purchased a mapmetometer and mapped a good bit of west Texas with that. During that time I leased up, in conjunction with brokers, I leased large areas on that geology, which I sold with the major and independent companies operating in West Texas.

Q. State whether or not you are familiar with the geology and oil development in McCulloch County, Texas, and adjacent counties?

A. Yes, sir.

Q. Will you state briefly the manner in which you became familiar with that development in those counties?

A. When I was with the Texas Company I informed myself on the geology, and when I left the Texas Company and started out for myself, I acquired maps, ownership maps, development maps of all the counties in West Texas, and among those was a map of McCulloch County.

Q. Have you ever drilled any wells in McCulloch County?

A. No, sir, I never drilled a well in McCulloch County, I drilled one right across the line in Concho County.

Q. When did you drill that well?

A. In 1935.

Q. What was the result of the drilling of that well?

A. Well, I drilled the well to approximately 2,450 feet, drilled down into the top of the Ellenberger. As I remember, 2,119 feet total depth to 2,452, got a good showing around 1,800 feet, and got fresh water in the Ellenberger, and the result was a dry hole. Lost about $12,000.00.

Q. Did you try any other wells in that vicinity?

A. No, sir, I didn't drill any other wells in that vicinity.

Q. Why didn't you drill other wells in that vicinity?

A. Well, I lost quite a bit of money, and the fact I got fresh water in the Ellenberger indicated to me that the chance for deeper production in there, in the Ellenberger, particularly, and any area adjoining it, was very limited, little chance of obtaining it.

MR. MILWEE: I neglected to ask Mr. Frank if he wanted to question Mr. Maverick as to whether he is a geologist.

THE COURT: No, you spent quite a good deal of time and found out he is a geologist and drilled a dry hole.

Q. What are your duties with the commission?

A. To investigate oil cases, prepare maps of them and find out the details.

Q. In connection with these duties, did you make investigation of the facts as to the past and present status of oil development in McCulloch County, Texas?

A. I did.

Q. When did you make that investigation?

A. In October, I made a trip since that time, October, 1941.

Q. Are you familiar with the location of the Paramount Block of acreage in McCulloch County, Texas?

A. Yes, sir, I am familiar with it.

Q. I wish you would state whether or not the Joiner Paramount location is in the largest producing areas of Texas?

A. No, sir, it is not in the producing area.

Q. Where is the closest production to the Joiner Paramount Well in McCulloch County?

A. The closest production I know of would be about ten or twelve miles north of it in Coleman County. At the time of my investigation, there was no production in McCulloch County, that is, oil production.

Q. Did your investigation disclose that they were dry holes between the production in Coleman County and the Paramount well?

A. It disclosed numerous dry holes around in the block.

Q. State whether or not that is indicative of the fact that production south of Coleman County had been cut off by these dry holes.

A. That is indicated.

Q. I wish you would state whether or not there are five producing oil fields in McCulloch County?

A. If you refer to the five producing oil fields shown on the map—there are no producing oil fields in McCulloch County.

Q. Do you know how long it has been since those fields produced?

A. Well, I examined the fields, where the wells were drilled, and it appears they were plugged and abandoned, the wells were abandoned some years ago.

Q. Did you visit each of the fields as indicated on the map, Exhibit 5?

A. Yes, sir, I went over them very carefully.

Q. Did you find any oil producing wells at all in this field?

A. None whatever.

Q. How did you locate this field?

A. Well I was shown on the map—I am used to checking up that sort of thing, I have done it for years—in addition to this map, I had an ownership map of Coleman and McCulloch County, showing the development which I used. That shows where the wells were drilled a bit more closely than this, but I actually visited these particular wells, and

made search, careful search, and found where a number of wells were drilled.

Q. Did you find any production in McCulloch County south of the Colorado River, on down south below Brady in McCulloch County?

A. Well, there is a well reported over in there recently.

Q. Do you know the history of that well?

A. Yes.

Q. Is that a new well?

A. No, that is not a new well, that well was drilled by Westbrook in 1935.

Q. How far is that well from the Joiner well?

A. Well, that well is—

Q. Approximately?

A. Possibly thirteen miles south, eight and a half miles west, it is on the extreme west line, within a mile of the west line of McCulloch County.

Q. Was that a re-conditioned well?

A. Yes. That is a re-conditioned well. It was abandoned and the landowner got his property back, and it seems that a man named Easterwood and Mayo just completed a dry well 1,000 feet northeast of it last month, and they moved in thirty days ago and begun to recondition this old well, and they shot it and according to the pumper, I found no one at the well myself.

Q. Is that the only well you found that is producing in McCulloch County, Texas?

A. Yes, sir.

Q. From your investigation?

A. Yes, sir, at the time of my original investigation there were no wells producing oil in the county.

Q. I want you to state whether or not the Joiner Paramount block in McCulloch County is literally studded with oil fields?

A. No.

Q. Is it located in the heart of one of the largest producing areas?

A. No.

Q. Is the Joiner Paramount well situated in one of the most likely locations where oil production can be found?

A. I would say it is a very unlikely location.

Q. In your opinion would you say that the indications are good for obtaining production, having a well, where the Joiner well is located?

A. No, sir, I would say they are very poor.

Q. State whether or not you have found dry holes surrounding the area of the Joiner well?

A. Yes, sir, I located a map and found some twenty-three dry holes within a radius of six miles of Joiner's location.

Q. I hand you Plaintiff's Exhibit 22, is this the map you refer to, and you prepared it?

A. Yes, sir, I prepared that map.

Q. Will you state briefly how you prepared the map and the source of the information?

THE COURT: I imagine he prepared it from his information, how do you suppose he could prepare it? He couldn't reach up and put nothing in there. I just don't like to spend so much time.

MR. MILWEE: Well, I will shorten it, your Honor.

Q. How many wells do you show on this map?

THE COURT: He just told you twenty-three dry holes within a radius of six miles.

A. Pardon me, I should have said twenty-two. I remember Joiner's No. 1, this area which I mapped, which covers approximately one hundred square miles, there is no production. It is twelve miles north and south and eight miles east and west. I covered that area very carefully, I located each well on the ground, obtained the records from the major companies, and certified copies of the well logs, or many of the logs which were available.

Q. You obtained certified copies from the railroad commission of Texas?

A. Yes.

MR. MILWEE: I offer the map in evidence.

(Marked "Plaintiff's Exhibit No. 22")

THE COURT: Well, that is what we have been doing with it, it is bound to be in evidence. Is there anything else?

Q. Did your endeavor disclose that the wells shown on the map were dry holes?

A. Yes, sir.

CROSS-EXAMINATION

By MR. FRANK:

Q. Have you ever brought in an oil field in your life?

A. I have been credited with bringing in oil fields.

Q. You know whether you have, don't you?

A. My maps have been credited with bringing in oil fields.

Q. There is not any secret, if you have brought in one, can't you tell us whether you have brought in one or not?

A. As I say, I have been credited with bringing in oil fields.

Q. Where?

A. Well, I made a first map in Cochran County, and Mr. Duggan employed me to do that work, and as a result of it, the drilling of that well on that block, one of the largest oil fields in the State of Texas was brought in.

Q. In one county?

A. No, sir, it extended over into—portions of the map indicated another area which was very likely, which was later drilled by the Texas Company and brought in a big area.

Q. Are you aware of the fact that a great number of geologists, including major companies, the geologists of the major companies, operating in Texas, practically unanimously said that there was no oil in East Texas until Mr. Joiner did bring in the East Texas field?

A. I rather doubt that they thought that.

Q. What did you mean by saying the production was cut off by dry holes, that is not a very scientific expression, is it?

A. Well, numerous dry holes drilled in McCulloch County, deep tests, and they have gone down to what I call the basement rocks, that have no possibility of producing oil.

Q. Did you measure a single one of the wells to see how deep it was?

A. I have certified copies of the well records, of those deep wells which were drilled in there.

Q. Each and all of them you had certified copies of the depth to which they had gone?

A. I had certified copies.

Q. How many dry holes did you locate when you were a consulting engineer?

A. I haven't kept a record of it.

Q. Did you ever advise anybody to drill a well at any place where they actually did get oil other than the one you have mentioned for the Texas Company?

A. Yes, sir, but I was very careful to put all dry holes on the map.

Q. Now, your investigation that you are speaking about down in that county was made in October last year?

A. Yes, sir.

Q. You have made no investigation since?

A. Yes, I went down there.

Q. When?

A. Just recently, I went down there last week to check up—this week—to check up on that well.

Q. You could drill a hundred dry holes in East Texas, and fail to go down to the proper sand, couldn't you?

A. Yes, sir, that is possible.

Q. There is no way of determining whether or not there is oil any place except by going there with a drill, is there?

A. Well, you know what the possibilities are, you would not say it was a likely area if there are numerous dry holes drilled around a particular spot.

Q. Don't you know that there have been many, many times when men drilled a hole right absolutely between two gushers in the same field, and got a dry hole, do you know that?

A. I would not say it happens very often.

Q. Is it or not true?

A. I don't know of any particular case.

Q. You have heard of such things as the situation like they had at the Mexia field, and beyond there, down beyond Groesbeck where a tremendously big well brought in ran a few days and went dry, and there was not another hole produced any oil anywhere around it. You have heard of such things as that, haven't you?

A. Only by wells going dry, yes, sir, you get on the edge, and they will go dry.

Q. As a matter of fact, until a block of land is drilled, there is no way of telling absolutely that there is not oil underneath it, is there?

A. You take a county and drill a hundred dry holes in it, many of them deep tests, you know pretty well what your possibilities are in that county.

Q. Tell me what the situation is immediately east of Ballinger?

A. Immediately east of Ballinger?

Q. Yes.

A. That is a long way removed from this area.

Q. I don't care how far removed it is, isn't it a fact that there have been dry holes all around there, and that there is

a producing field at the present time in sight of the City of Ballinger, within six or eight miles, with wells in a distance over a mile producing at the present time, after dry holes have been drilled all around?

A. I think there is a very small quantity being produced.

Q. Don't you know that there is one there about two or three miles from the new field that has produced over a million barrels of oil, within ten or twelve miles of Ballinger, a little northeast of the town?

A. I doubt if that is a commercial field.

MR. MILWEE: I want to offer a certificate from the Commission, it is a certified copy.

(Marked "Plaintiff's Exhibit No. 23")

MR. FRANK: We object to this Exhibit 23, as being a certificate of a negative fact. I think the statute provides you can give a certified copy of anything in the office, but anything that is negative would have to be proven up by deposition or by individual testimony.

MR. MILWEE: It is a certificate by the secretary of the Securities & Exchange Commission to the effect that diligent search has been made of the books and records of the Commission, and it fails to disclose—(reading exhibit).

THE COURT: Well, you may put it in, I don't know as it proves anything.

MR. FRANK: We object to it as being irrelevant and immaterial and not competent proof.

MR. MILWEE: I have another certificate from the comptroller's office of the State of Texas, a certified

copy as to what their records show in respect to the production in McCulloch County, Texas, dated March 4, 1942.

THE COURT: It has been proven here that there is production there now, just came in, in spite of all of this search, and everything.

MR. MILWEE: I offer this for the purpose of showing that during this period of time there had been no commercial production in the county, at the time this literature was sent out. It is our view that the literature indicates there has been, and this is offered to show that there has not been.

THE COURT: Well, all right, put it in.

MR. FRANK: We object on the ground that it is an attempt to prove a fact by the certificate, and certainly under the state practice of this case, neither the comptroller nor the secretary of state, nor anybody else is permitted to certify that a certain thing is not true. He is permitted to certify to reports that are there, but to state that a certain condition that is not true, is a statement of a negative fact, and my understanding is that that is incompetent. We object to it on that ground.

THE COURT: All right, I will give the government the exception. Sustain the objection. But it goes in the record, so that the upper court may look at it and see whether it is admissible or not.

MR. MILWEE: I offer in evidence as "Plaintiff's Exhibit 25", this certificate.

MR. FRANK: Your Honor, this is a thirty-page document typewritten on long paper, that if it were put in the printed record at $1.50 per page, would cost at

least fifty dollars, it is in the nature of an abstract. It is a transcript of a lot of instruments that I think are entirely immaterial to any issue in this case, I don't see how in the world they could add anything to the evidence in the case, or how it could effect it in any way. We object to it as utterly irrelevant and immaterial.

THE COURT: I don't know what it is yet.

MR. MILWEE: This is a certified copy of certain oil and gas assignments on record in McCulloch County, Texas. We offer it at this time to show that certain of these assignments contained assignments by the Joiner Leasing Corporation to the Miller Leasing Corporation and to certain investors, and subsequent to those sales by the Miller Leasing Company, there are certified copies of two or three sales by C. M. Joiner Leasing Corporation subsequent to that date, to some individuals. We offer it for the purpose of showing that as late as February 6, 1942, the C. M. Joiner Leasing Corporation were issuing assignments of oil and gas leases to the Miller Leasing Company. There are eight of these assignments, and that is the purpose for which we offer it.

MR. FRANK: No dispute about it. Mr. Joiner said he had given a number of leases since this, but had not sold those. It is just cluttering up the record. If the government wants to make it so impossible that a citizen cannot appeal, they could bring in five hundred or a thousand of those leases. It is a waste of time and money, and it makes a record unusually long. There is no reason why he should not have asked the witnesses about these, instead of bringing in thirty pages of typewritten matter, and throwing it all in here at one time.

MR. MILWEE: I endeavored to do that by Mr. Joiner, and he could not state what they were. These were the only copies we have brought in. We didn't take

the deposition of these witnesses. There are only eight assignments.

THE COURT: I overrule the objection, and the rules provide, as you gentlemen know, that you can agree among yourselves and cut the record down. I do not let it in with any thought that it is going up to the reviewing court, because we would all be criticised. All you have to do is to say the leases were made to the following parties, and put it on less than a sheet of paper. With that understanding that counsel will do that, I overrule the objection at this time. If that is not done, I will sustain the objection.

MR. FRANK: For the purpose of the record, we except.

THE COURT: All right.

WHEREUPON BOTH SIDES CLOSED

COURT ORAL OPINION AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed May 21, 1942.)

THE COURT: This appears to be the ordinary promotion scheme wherein one or more men get together and buy some leases, and then another drills. Then to incite others to purchase from them what they have to sell, to-wit, leases, on the theory that the well they were going to put down may strike some oil.

Defendant Joiner knew about Johnson's activity doing business under the style of Miller Leasing Company. Mr. Joiner apparently chose to, and allowed him the exclusive privilege of selling leases adjacent to the well that was being sunk in McCulloch County up to and including about the 20th of July, 1941, at which time, apparently, Joiner actively sought, himself, to sell at a price less than that which he had theretofore sold to Johnson. His agreement with Johnson was that he would sell Johnson leases at $8.00 per acre, and Johnson was re-selling those leases for approximately $15.00 per acre. After July 15, we will say, Joiner began to sell at $5.00 an acre. He says that he did that because Johnson's leases were closer to the well.

The representations made in these circulars and letters which were sent out, both by Joiner and Johnson, were not supported by the facts. They were not denied by some of the facts either, because subsequently and quite recently, in fact, oil has been found in that particular county.

What they said was not true, that this particular county was in the center of or in the heart of the highest production area in Texas, it was rather remote from it, though contiguous to a shallow and a smaller production.

Mr. Joiner seems to have kept his contract with Mr. Anthony, the driller, and Anthony, the driller, seems to be the one who was unable to go forward in the manner he had agreed to go forward with Joiner.

Joiner now has invested more funds in order to eventually satisfy himself as to the productivity or non-productivity of that particular area, and has invested more than he has received.

All of which I find as facts.

Now, as to the law:

One can hardly justify the reading of a statute which has claws in it such as has this statute, in such way as to cover what it manifestly does not cover.

Here is an attempt to enjoin a man from selling not an interest in what he had, but from selling a contract, a part, an actual part, an integral part of what he bought.

As the hole went down, and if it struck oil, then those who had bought the leases closer up might be able to sell their leases for a larger profit, but they had no interest in the oil in the well. It was not an investment in the well. They merely took a chance relying upon the representation made to them with reference to the sort of a geological field the well was going down in; that that particular field, or that particular well, rather, might become an oil well. If it should become an oil well, then they, owning near it, being somewhat close to it, might be able to sell their lease, or to drill wells on what they owned. If they wished to sell the lease, they might be able to sell it at a profit, and things of that sort.

I cannot conceive of any language in the act that justifies the inclusion of a contract like this, in the Securities & Exchange Act.

The very wording, as has been said by Mr. Frank, excludes, because it mentions leases, but mentions the kind of lease, and the leases here are not the kind of leases mentioned in the act.

I do grant that these promotion schemes are of detriment to the people, no doubt about that. They should be stopped. We have a criminal statute that will stop them. These letters being sent out with a fraudulent intent is a

fraudulent use of the mails, it does not make any difference whether there is any interstate use or not, and that interstate feature does not enter into the Securities Act.

I think I should also find, which I do, that Joiner furnished to Johnson the names which Johnson canvassed first for prospective customers, then in order that Joiner might know where Johnson had actually sent the letters, Johnson gave Joiner the list. The two gentlemen explained that interchange of lists, or, rather, the refurnishing of Johnson to Joiner of lists which Joiner had theretofore furnished him, by saying that their books were a little bit out o. harmony with each other, with reference to sales and payments, that Johnson had made.

Johnson evidently conceding that he had made representations and efforts that were not exactly supported by the testimony, nor supported by the facts, according to a permanent injunction which has been issued in this case. Joiner has not so agreed, and this testimony has been put on, and I don't think that the law covers it, and I therefore deny the restraint asked for by the plaintiff.

In drawing your decree, which is to be okayed by the other side, you may save such exceptions as may be wished.

I, T. C. IRBY, certify that during the trial of the above styled and numbered cause, I was the regularly appointed and qualified shorthand reporter; that I took shorthand notes of the proceedings upon said trial, and have transcribed the same as shown by the above and foregoing 131 pages, and that said transcript is true and correct.

T. C. IRBY,
Shorthand Reporter.

PLAINTIFF'S EXHIBIT 1

STATE OF TEXAS
COUNTY OF DALLAS

This drilling contract entered into by and between A. L. Anthony, Party of the first part and C. M. Joiner Leasing Corporation, Party of the Second part, witnesseth:-

The party of the first part agrees to furnish all tools, fuel, water, and labor necessary to, and to drill a well for the party of the second part on the S. A. Lawson lease in McCulloch County, Texas. The Party of the first part is to defray all expenses incident to drilling and completing said well except the casing and tubing which is to be furnished by the Party of the second part.

The price which Party of the first part is to receive for drilling said well in a good and workmanlike manner is two dollars and fifty cents ($2.50) per foot to be paid as follows: $1.50 per foot to be paid as the well progresses and $1.00 per foot payable within fifteen days after said well is completed. The contract depth for said well is 2,000 feet unless oil and gas in paying quantities is encountered at a lesser depth.

The party of the second part is not to be held liable either in law or equity for any labor, or other expenses incident to the drilling of said well. The party of the second part is not to be held liable for any damages either to the property at said well or any personal accident to any labor on same.

The well when completed is to belong to the party of the second part together with all the casing and tubing. The other machinery and tolls, including line pipe and drilling tools and engine is to remain the property of the party of the first part.

Witness our hands at Dallas, Texas, this the 6th day of June, 1941.

A. L. ANTHONY

(signed) A. L. Anthony
Party of the first part.

C. M. JOINER LEASING CORPORATION

By (signed) C. M. Joiner
Party of the second part.

ATTEST:

(Seal)

PLAINTIFF'S EXHIBIT 2

WESTERN UNION

1941 JUL 1 AM 8 59

JG 8 25 COLLECT—BRADY TEX 1 829A

JOHN T. JOHNSON

MILLER LEASING CO 1318 WOOD ST DAL
DRILLING BELOW 625 FT ON PARAMOUNT WELL IN LIME.
HAVE STRONG SHOWING OF GAS INDICATING WE ARE HIGH.
EVERYTHING RUNNING GOOD AND PROGRESSING NICELY.

C. M. JOINER

A SUPREME EFFORT—A FITTING
CLIMAX *to the* MOST GLORIOUS
nd MOST SUCCESSFUL CAREER
IN THE HISTORY OF OIL

C. M. Joiner

Paramount

DEVELOPMENT

AN OPPORTUNITY OFFERED TO THE FRIENDS OF C. M. "DAD" JOINER BY

The Miller Leasing Co. 1318 WOOD ST.
DALLAS, TEXAS

Materials unsuitable for Microcards

Materials print is cut at bottom of page



C. M. "Dad" JOINER'S PARAMOUNT EFFORT

A personally selected location by the World's Greatest Wildcatter

C. M. JOINER
19TH FLOOR KIRBY BUILDING
DALLAS, TEXAS

December 11, 1940

Miller Leasing Company
Dallas, Texas
Gentlemen:

In consideration of the very fine manner in which your organization has handled the sale of leases in the past, it is with a great deal of pleasure that I grant you permission to be the first to purchase choice acreage near my NEW PARAMOUNT DEVELOPMENT.

For very good business reasons you know it is my desire to keep this location unknown to the oil world, until the well is spudded in and underway. I trust you to keep this secret with me, until I am ready to formally announce its location.

I believe that in the meantime you can benefit your clients by offering them the choicest acreage obtainable—that is acreage purchased now, the very first to be sold and the closest to the drilling site.

In my opinion, this is one of the most likely locations in Texas today, where oil production can be expected, and, I believe all your friends will agree with me upon receipt of their lease, showing the exact location, as you have first choice of acreage in this block.

This is certainly my supreme effort in attempting to reward you and others, by again bringing in another great oil field, and believe this endeavor is most approbately named my PARAMOUNT DEVELOPMENT.

Yours very truly,

C. M. Joiner

C. M. JOINER

DAD JOINER'S DISCOVERY WELL
The entire world was electrified by the bringing in of the first Gusher in the Oil Empire of East Texas.

A SINCERE ENDEAVOR TO REWARD YO

with a duplication of the success achieved in the g
JOINER East Texas Oil F

Why IT IS to YOUR ADVANTAGE to own acreage near "Dad" Joiner's PARAMOUNT Development

You get the benefit of the experience and judgment of C. M. "Dad" Joiner, the greatest wildcatter the world has ever known.

You get the choicest acreage, FIRST CHOICE, in this new development, that Mr. Joiner terms his Paramount effort.

You know that Mr. Joiner will spare no expense personally, to make this his supreme effort to again bring in another great oil producing area.

You know that Mr. Joiner has your interest at heart and that his greatest ambition is to again duplicate his East Texas Discovery, thereby rewarding his many friends who have kept faith with him.

REMEMBER—nothing pays off so quickly, or profitable, like owning acreage near a successfully completed wildcat well.

THIS SPECIAL OFFER is being made only by the Miller Leasing Company, and as we have first choice on all close-up acreage, may we suggest that you get your application in before Mr. Joiner announces this location and the advance in price.

Read carefully—Send no money

Enclosed with this letter is an application blank which gives you the right to reserve a choice block in this area. We will hold this block for you, at the original price of $15 per acre, and just as soon as possible we will furnish you with a map showing both the location of the well and your exact holdings, also full information on this area.

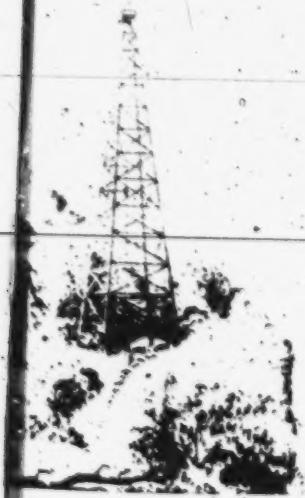
If at that time, *you are not thoroughly satisfied* with your location, and believe that you have a chance of making a subtantial profit from your lease holdings, [illegible] *no obligation what-so-ever.*

P.E. 51.

MILLER LEASING COMPANY

Texas Oil and Gas Leases

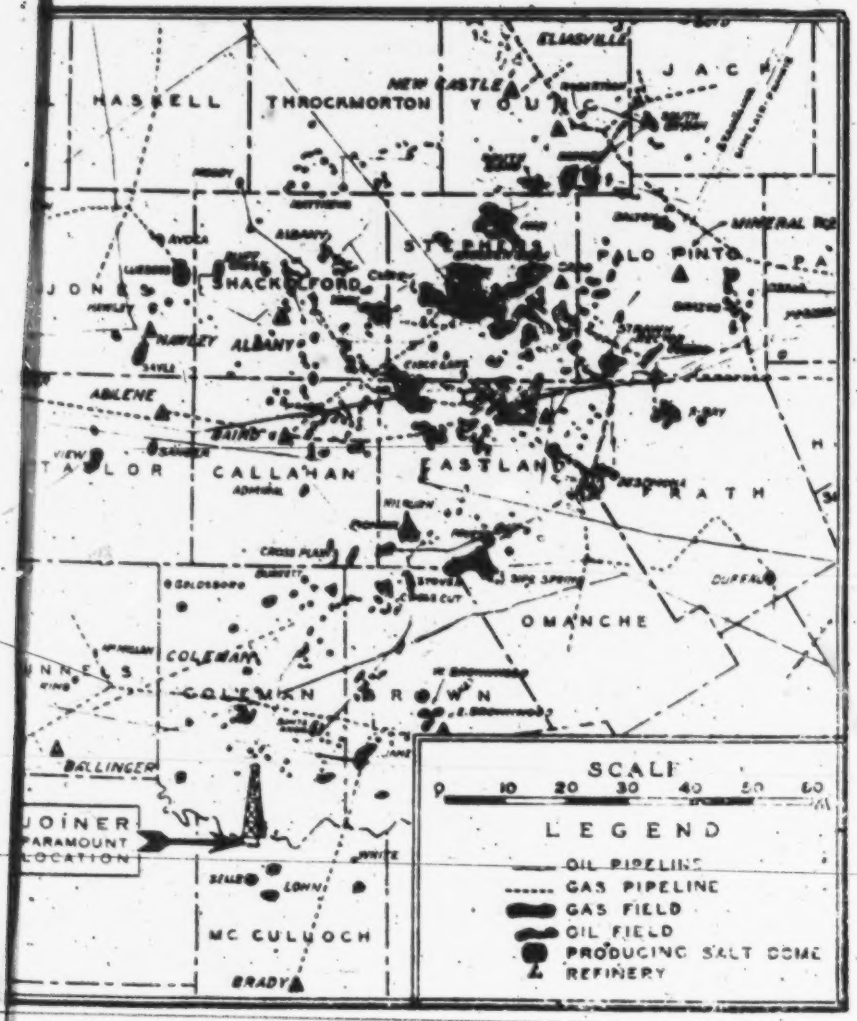
ADDRESS POST OFFICE BOX 341
1318 WOOD STREET DALLAS, TEXAS



ETCHING OF
WORLD'S MOST FAMOUS OIL WELL—JOINER EAST TEXAS DISCOVERY WELL

Exhibit No 3

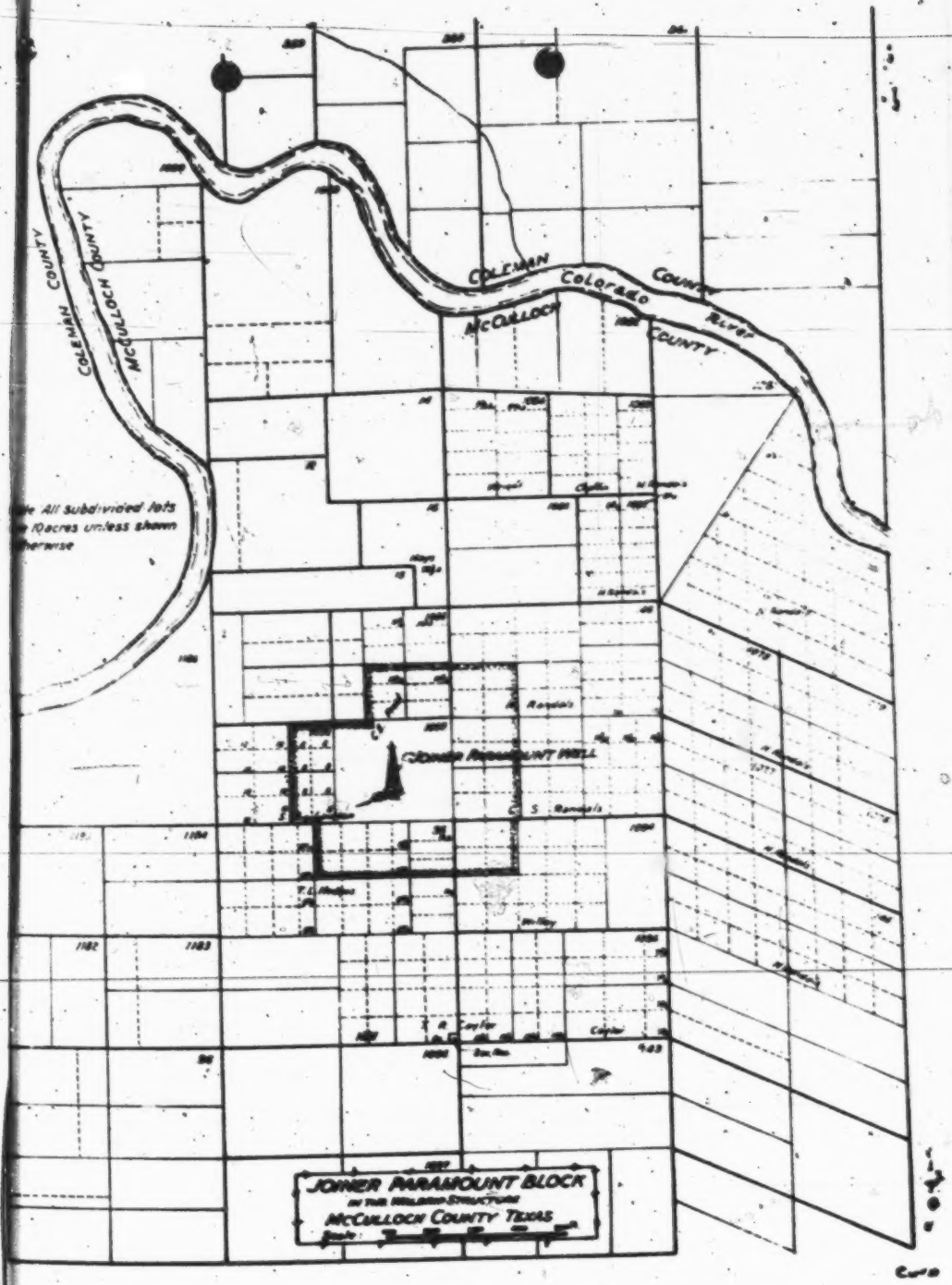
V-5



JOINER "PARAMOUNT" LOCATION

"Dad" Joiner has gone right into the heart of one of the largest producing areas in all Texas, in his endeavor to make this the supreme achievement of his career. Take a good look at this map—notice how in most every direction—you'll find not just a few, but literally hundreds of producing areas. Notice the map of acreage on the following page—we have only a limited amount (all we could possibly obtain in an area like this) —so we earnestly advise you to get your application in at once!

Plaintiff's Exhibit 5



MILLER LEASING COMPANY

Texas Oil and Gas Leases

ADDRESS POST OFFICE BOX 341
1318 WOOD STREET DALLAS, TEXAS

Here it is--the NEWS YOU'VE WAITED FOR! "Dad" Joiner's great new "PARAMOUNT LOCATION"--in one of the largest producing areas in all of Texas.

Here, in McCulloch County, Texas, "Dad" Joiner has chosen and assembled a small block of acreage in an area literally studded with oil fields, look at the map on page two, if you desire, attempt to count the oil fields shown in green, you will be amazed at the number.

We have written you several letters about this new location--we told you that it was "Dad" Joiner's supreme effort in attempting to reward you and others, by again bringing in another great oil field, and believe that you will agree with us that it is most appropriately named "JOINER'S PARAMOUNT WELL."

You really have had no way of knowing just how great this opportunity would be, until now, because this is the first announcement of the location--the first chance you have had to see for yourself the great oil producing area in which this location was made, so in fairness to you, we are extending our original offer of CHOICE ACREAGE at $15.00 per acre.

You can understand, that in an area like this, there should be a great demand for leases. We feel sure that after studying the enclosed maps that you will want a lease in this area, recorded in your name. We earnestly advise you to get your application in by RETURN AIR MAIL, so as to be assured of getting one of the very best locations.

All arrangements have been made--the "track is clear"--We're going after another Great Joiner Oil Field. We invite you to check this area in every way possible, convince yourself that this is an oil territory, that should reward you handsomely, with the successful completion of this well.

Again, we want to urge you to look at the maps very carefully, it tells the story far better than words, and to suggest that you get your application in as soon as possible for the best locations.

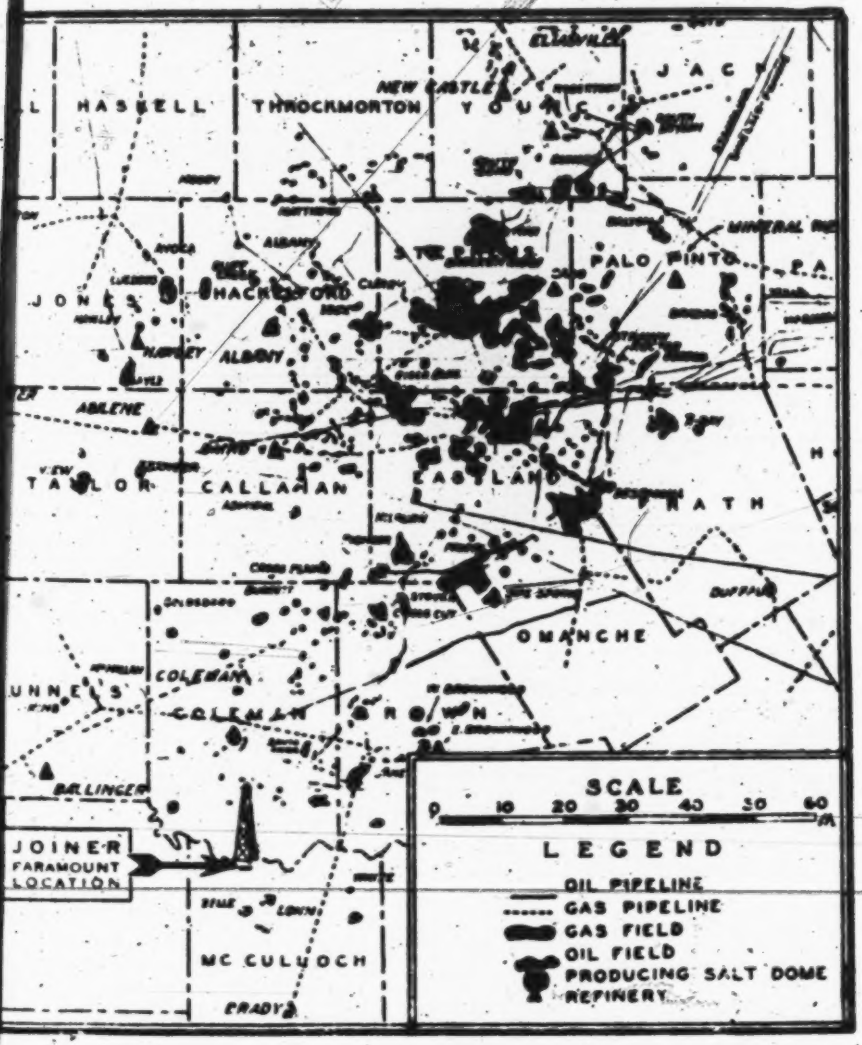
Sincerely,

Miller Leasing Company



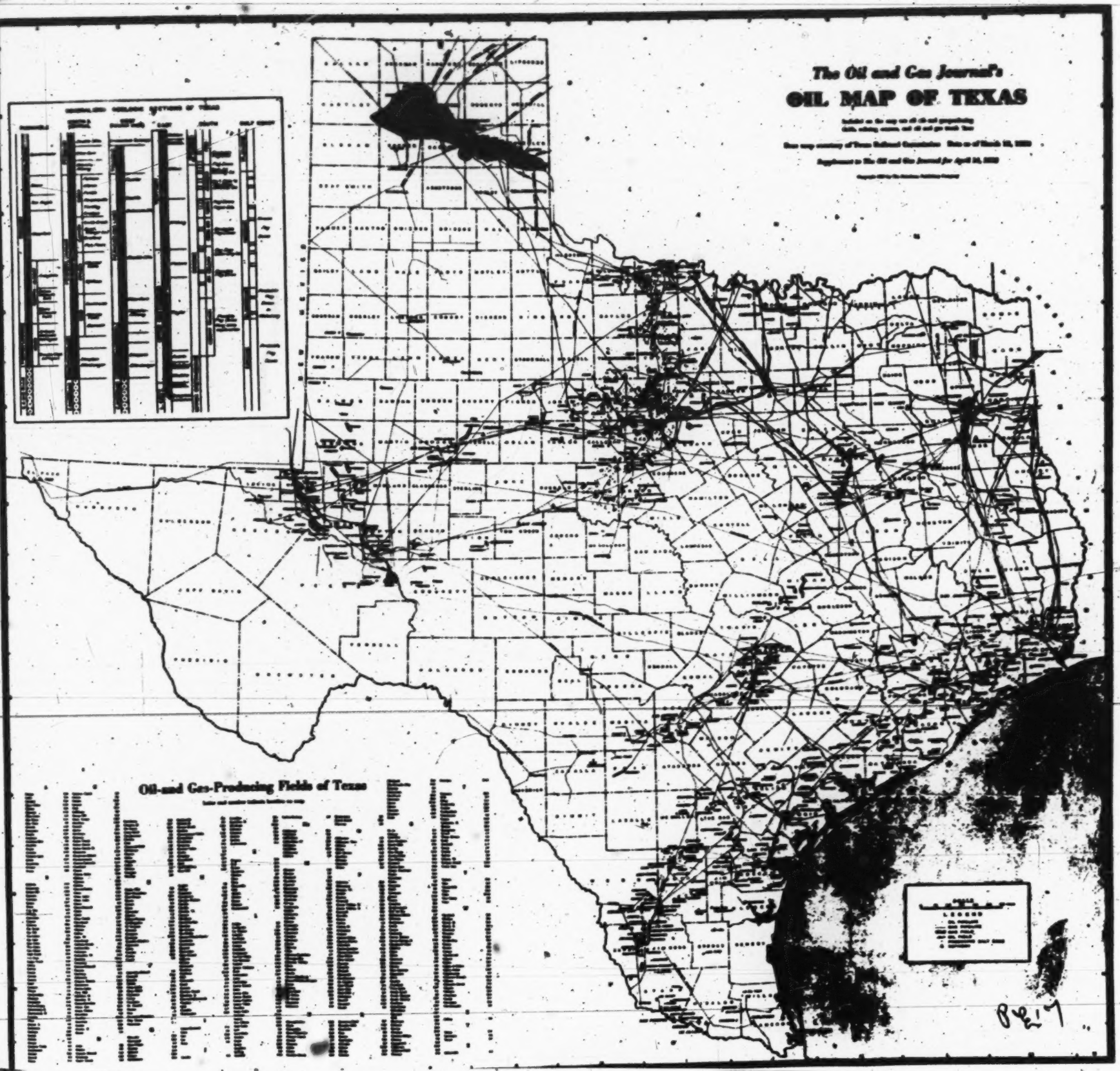
DERRICK OF
WORLD'S MOST FAMOUS OIL WELL--JOINER EAST TEXAS DISCOVERY WELL

Exhibit No. 4



JOINER "PARAMOUNT" LOCATION

"Dad" Joiner has gone right into the heart of one of the largest producing areas in all Texas, in his endeavor to make this the supreme achievement of his career. Take a good look at this map—notice how in most every direction—you'll find not just a few, but literally hundreds of producing areas. Notice the map of acreage on the following page—we have only a limited amount [all we could possibly obtain in an area like this] —so we earnestly advise you to get your application in at once!


The Oil and Gas Journal's
OIL MAP OF TEXAS
Oil-and Gas-Producing Fields of Texas

PLAINTIFF'S EXHIBIT 8

MILLER LEASING COMPANY

Texas Oil and Gas Leases

Address Post Office Box 341
1318 Wood Street, Dallas, Texas.
December 21, 1940

MR. FRANK SCHNEIDER
General Delivery
Los Angeles, California

DEAR MR. SCHNEIDER:

Thank you for your $25.00 Money Order covering your down payment on a 10-acre lease in Mr. Joiner's new "Paramount Development". We sincerely hope that this will reward you handsomely with a nice profit on your investment, because we believe that this well is destined to be one of Mr. Joiner's greatest achievements.

We have set aside one of the first and choicest locations for you, and your recordable Oil and Gas lease assignment will be mailed to you upon completion of your payments. There is also a choice 10-acre tract adjoining yours that we are going to hold until we send you complete information on the location and facts concerning this area. If at that time you feel that you want to increase your holdings we can issue it to you and give you a complete block, which would naturally be worth a great deal of money with the successful completion of this well. However, this is no obligation on your part, we will merely hold this until you have complete facts about this area, and if at that time you want it, we will issue it to you at the same price.

We want to take this opportunity to wish you a very "Merry Christmas" and a most successful New Year. With kindest regards, we remain.

Sincerely yours,

MILLER LEASING COMPANY
JOHN T. JOHNSON

(Etching of World's Most Famous Oil Well—
Joiner East Texas Discovery well)

PLAINTIFF'S EXHIBIT 9

MILLER LEASING COMPANY

Texas Oil and Gas Leases

Address Post Office Box 341
1318 Wood Street, Dallas, Texas.
February 20, 1941

MR. FRANK SCHNEIDER
General Delivery
Los Angeles, California

DEAR MR. SCHNEIDER:

We want to thank you for your remittance of $25.00 which make a total of $75.00 paid on your lease, or five acres paid in full.

As Mr. Joiner has not announced this location, as yet, may we suggest that we hold the ten acres as originally assigned to you, and as soon as possible we will send you a map showing the location of the well, also the exact ten acres reserved for you, and if at that time you do not wish to purchase the entire ten acres, we can divide same into two five acre tracts and issue one in your name.

We are indeed sorry to hear of you losing your job, especially on account of age limits, when you may have been more efficient than the younger man who replaced you, but perhaps by this time to make your next payment you will have obtained a much better position.

We want to assist you in any way possible to obtain this ten acre lease; so we are going to hold the ten acres in your name, until such time as the announcement of the well is made, and then perhaps we can work out a plan that will help you to complete your purchase without working any hardship on you.

We assure you that you have a five acre lease paid for and at a later date you find that you are unable to purchase the entire ten acres, we can then issue you the five acre tract.

Sincerely,

MILLER LEASING COMPANY
JOHN T. JOHNSON

Etching of World's Most Famous Oil Well—
Joiner East Texas Discovery Well.

Assignment of Oil and Gas Lease

No. 57

WHEREAS on the 12th day of MARCH, 1941, a certain oil and gas mining lease was made and entered into by and between [illegible] Lessor and [illegible] Lessee, covering the following described land in the County of McCulloch and State of Texas, to-wit:

(1) 160 acres, all of Valentine Hohman Survey No.1092, Certificate No. 637, Abstract No. 570, patented to Valentine Hohman by Patent No. 168, volume 11; and being the same land conveyed by Lee Kimbrough, Special Commissioner to J.A.Lawson by deed dated January 18th, 1937, recorded in Volume 96, Page 507, Deed Records of McCulloch County, Texas, to which deed and the record thereof, reference is here made, for pertinent, 160 acres, more or less.

Said lease being recorded in the office of the County Recorder in and for said County in book 102 Page - 100 - - - - - - - - and

Whereas, the said lease and all rights thereunder or incident thereto as assigned herein are now owned by

C. M. JOINER LEASING CORPORATION

Now, Therefore, for and in consideration of One Dollar (and other goods and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owner of the said lease and all rights thereunder or incident thereto, does hereby bargain, sell, transfer, assign and convey all rights, title and interest of the original lessee and present owner in and to said lease and rights thereunder in so far as it covers the following tract of land:

[illegible] the East one-half, containing 12-- acres, more or less, of the South Twenty-[illegible] acres of the West Ninety- ix acres (E½- 12 Ac. of S. 24 Ac-of W. 96 Ac.) of the J.A.Lawson and wife Lawson 160 acre tract of the Valentine Hohman Survey No.1092, Cert.#637, Abst.#570, McCulloch County, Texas.

CONVEYING HEREIN TWELVE ACRES MORE OR LESS. - - - - - - - - - - - - - -

C. M. JOINER LEASING CORPORATION

Now, Therefore, for and in consideration of One Dollar (and other goods and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owner of the said lease and all rights thereunder or incident thereto, does hereby bargain, sell, transfer, assign and convey all rights, title and interest of the original lessee and present owner in and to said lease and rights thereunder in so far as it covers the following tract of land:

The East one-half, containing 12-- acres, more or less, of the South Twenty-four acres of the West Ninety- ix acres (E½- 12 Ac. of S. 24 Ac-of W. 96 Ac.) of the S. A. Lawson and wife Mae Lawson 160 acre tract of the Valentine Hohman Survey No.1092, Cert. 637, Bat. 570, McCulloch County, Texas.

CONTAINING SIX TWELVE ACRES MORE OR LESS. - - - - - - - - - - - - - - - - -

together with all personal property used or obtained in connection therewith to

MILLER LEASING COMPANY and ITS ~~heirs~~, successors and assigns.

And for the same consideration, the undersigned for itself, its successors and representatives, does covenant with the said assignee ITS ~~heirs~~ successors, or assigns, that C. M. Joiner Leasing Corporation is the lawful owner of the said lease and rights and interests thereunder as herein assigned and of the personal property thereon or used in connection therewith; that the undersigned has good right and authority to sell and convey the same; and that all rentals and royalties due and payable thereunder have been duly paid to date.

Note: This Lease carries an annual rental of $1.00 per acre payable to the lease rental account of S.A. LAWSON AND WIFE MAE LAWSON - - - - - - - - - - - - - - - - - -

at the BRADY NATIONAL Bank of BRADY, TEXAS on or before the 12th day of March - of - - each year hereafter during the primary term of said Lease. The primary term of said Lease expires March 12, 1951. 19.....

In Witness Whereof, The undersigned has caused this instrument to be signed by its duly authorized officers, and its corporate seal affixed hereto this 6th day of MAY, A. D. 1941

C. M. JOINER LEASING CORPORATION

Attest:

Secretary

By C. M. Joiner

Its President.

28

5 & 2

THE STATE OF TEXAS, }
COUNTY OF DALLAS }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared

- - - - C. M. JOINER - - - - - - - known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said C. M. JOINER LEASING CORPORATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day of MAY A. D. 1941.

Bailey B. Baxter

Notary Public in and for Dallas County, Texas.

Bailey B. Baxter

KNOW ALL MEN BY THESE PRESENTS, That, I *JNO. T. JOHNSON, operating as Miller Leasing Co.* for and in consideration of the sum of One ($1.00) Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, have this day assigned, transferred, conveyed and sold unto

FRANK SCHNEIDER - - - - - - - - , all of my right, title and interest in and to the foregoing oil and gas lease as described and set out in the assignment on the reverse side of this sheet, and the assignee herein hereby accepts same and assumes the payment of the rentals as stipulated therein.

Dated at DALLAS, TEXAS this 6th day of MAY, A. D. 1941.

MILLER LEASING COMPANY

Jno. T. Johnson

THE STATE OF TEXAS, }
COUNTY OF DALLAS }

BEFORE ME, the undersigned authority, a Notary Public, in and for the County and State aforesaid, on this day personally appeared JNO. T. JOHNSON known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 6th day of MAY, A. D. 1941.

Bailey B. Baxter

Notary Public in and for Dallas County, Texas.

Bailey B. Baxter.

Vol. 743

NMENT OF
D GAS LEASE

From J. JOINER

CORPORATION

TO

ASING COMPANY

To

California

3 1941

THE STATE OF TEXAS,
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public, in and for the County and State aforesaid, on this day personally appeared JNO. T. JOHNSON, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 6th day of MAY, A. D. 1941.

Notary Public in and for Dallas County, Texas.
Dalley B. Parker.

No. 743

ASSIGNMENT OF OIL AND GAS LEASE

From C. M. JOINER

LEASING CORPORATION

TO MILLER LEASING COMPANY

To FRANK SCHNEIDER
General Delivery
Los Angeles, California

FILED FOR RECORD
JUN 3 1941

Kate Pratton

THE STATE OF TEXAS,
COUNTY OF McCULLOCH

I, Geo. C. Parker, Clerk of the County Court in and for said County, hereby certify that the foregoing instrument dated the 6th day of May 1941 was filed for record in my office, the 3rd day of June 1941 at 9 00 o'clock A M., and duly recorded the 3rd day of June 1941 at 10 15 o'clock A M., in DEED Record of said county, in Vol 102 on pages 16 Tand 162

Witness my hand and the seal of the County Court of said County, at office in Te... the year last above written.

Geo. C. Parker Clerk

By Kate Pratton Deputy.

County Court, McCulloch County.

MILLER LEASING COMPANY

Texas Oil and Gas Leases

2 11

ADDRESS POST OFFICE BOX 341
1218 WOOD STREET DALLAS, TEXAS

March 25, 1941

A. S. Charleston
Los Angeles, California

Dear Mr. Charleston:

Here it is--the NEWS YOU'VE WAITED FOR! "Dad" Joiner's great new "PARAMOUNT LOCATION"--in one of the largest producing areas in all of Texas.

Here, in McCulloch County, Texas, "Dad" Joiner has chosen and assembled a small block of acreage in an area literally studded with oil fields, look at the map on page two, if you desire, attempt to count the oil fields shown in green, you will be amazed at the number.

We have written you several letters about this new location--we told you that it was "Dad" Joiner's supreme effort in attempting to reward you and others, by again bringing in another great oil field, and believe that you will agree with us that it is most appropriately named "JOINER'S PARAMOUNT WELL."

You really have had no way of knowing just how great this opportunity would be, until now, because this is the first announcement of the location--the first chance you have had to see for yourself the great oil producing area in which this location was made, so in fairness to you, we are extending our original offer of CHOICE ACREAGE at $15.00 per acre.

You can understand, that in an area like this, there should be a great demand for leases. We feel sure that after studying the enclosed maps that you will want a lease in this area, recorded in your name. We earnestly advise you to get your application in by RETURN AIR MAIL, so as to be assured of getting one of the very best locations.

All arrangements have been made--the "track is clear"--We're going after another Great Joiner Oil Field. We invite you to check this area in every way possible, convince yourself that this is an oil territory, that should reward you handsomely, with the successful completion of this well.

Again, we want to urge you to look at the maps very carefully, it tells the story far better than words, and to suggest that you get your application in as soon as possible for the best locations.

Sincerely,

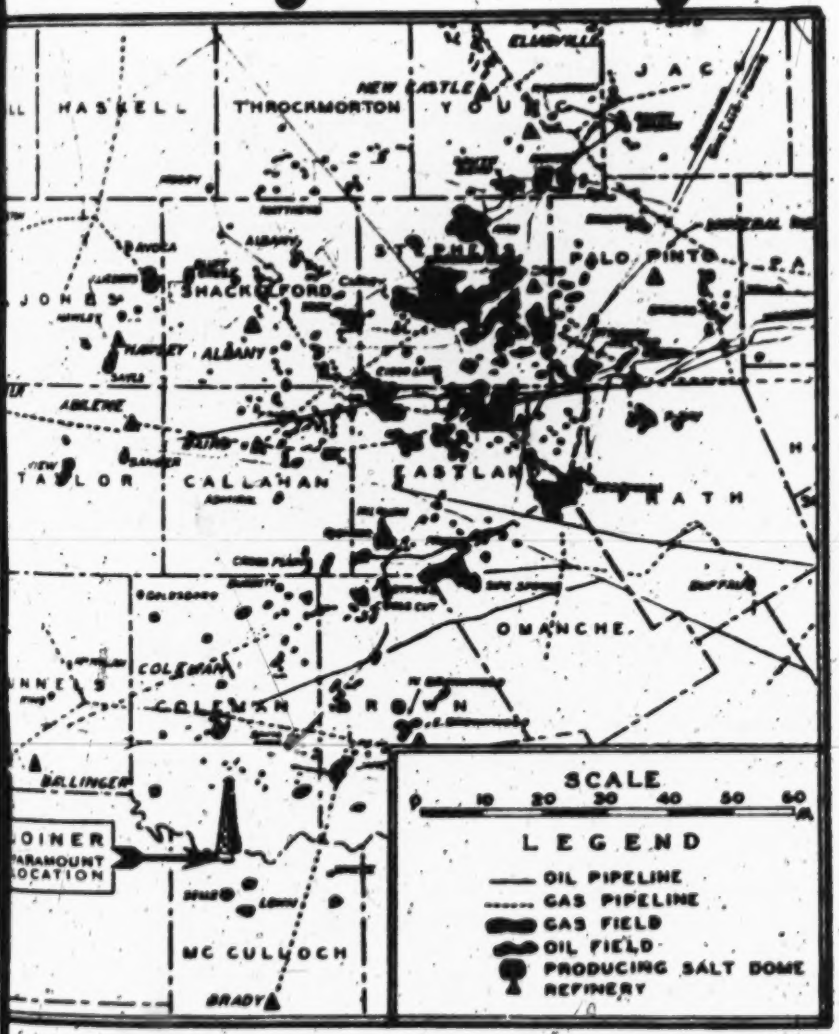
Miller Leasing Company

Jno. T. Johnson

EXHIBIT 1

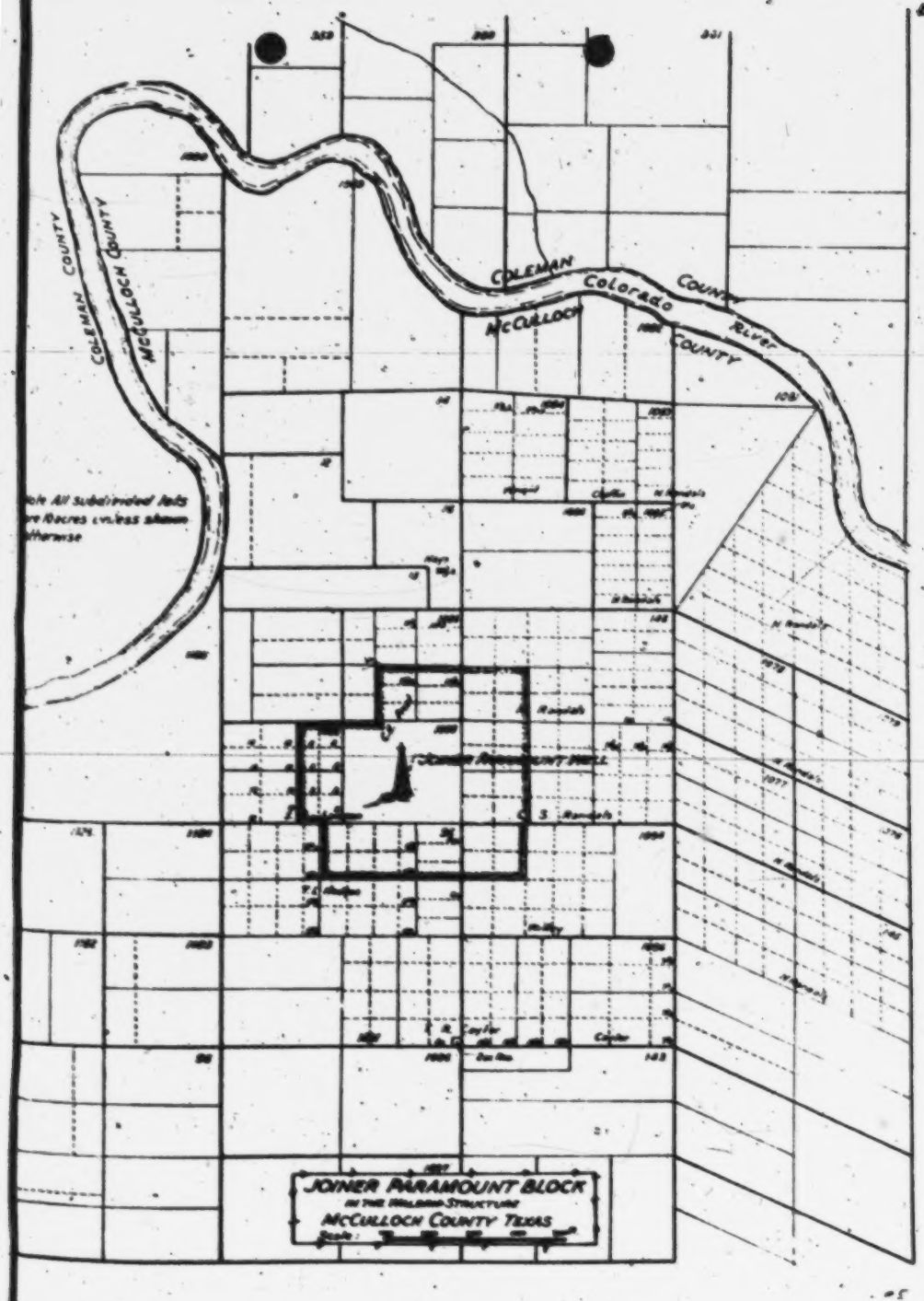


STICKING OF
WORLD'S MOST FAMOUS OIL WELL—JOINER EAST TEXAS DISCOVERY WELL



JOINER "PARAMOUNT" LOCATION

"Dad" Joiner has gone right into the heart of one of the largest producing areas in all Texas, in his endeavor to make this the supreme achievement of his career. Take a good look at this map—notice how in most every direction—you'll find not just a few, but literally hundreds of producing areas. Notice the map of acreage on the following page—we have only a limited amount (all we could possibly obtain in an area like this) —so we earnestly advise you to get your application in at once!


COLEMAN COUNTY
McCULLOCH COUNTY
COLEMAN COUNTY
Colorado River
McCULLOCH COUNTY
JOINER PARAMOUNT BLOCK
IN THE WALDEN STRUCTURE
McCULLOCH COUNTY TEXAS

C. M. JOINER LEASING CORPORATION
DALLAS, TEXAS

Dallas, Texas.
March 22, 1941.

ller Leasing Company,
18 Wood St ,
llas, Texas.

ntlemen:

This is to advise you that the location for the
xt well (which you are pleased to call the Paramount Well,
ich we hope is appropriate) is in McCulloch County, Texas.

I am inclosing herewith a map from which you will
able to show the relation of this location to the various
fields in that territory.

That we will get production there we have no doubt,
wever, it will take the bit to disclose how much production
y be had at that location.

Wishing you every success,

Very respectfully,

C. M. JOINER LEASING CORPORATION
BY C. M. Joiner

CU/D

Plaintiff's Exhibit 11

SPECIAL LOCATION



Application for Purchase

C. M. JOINER'S Acreage — Paramount Area

MILLER LEASING COMPANY
1318 Wood Street DALLAS, TEXAS

Gentlemen:—

I have read Mr. Joiner's letter regarding his new development and desire to purchase an Oil and Gas Lease at the special price now being offered by you.

☐ **5-Acres at $15.00 per acre . . . Total Price $** 75.00
Enclosed please find $ 7.50 as First Payment, balance payable $ 12.50 per month.

☐ **Acres at $15.00 per acre . . . Total Price $**
Enclosed please find $ as First Payment on FIVE ACRE LEASE, balance payable $ per month.

Upon final payment, I am to receive a Recordable Oil and Gas Lease, issued in my name, conveying ownership to a FULL commercial OIL and GAS LEASE on a certain described tract of land.

Date_____ Name_____

Make all Checks or Money Orders payable to MILLER LEASING CO.,
Dallas, Texas

Address_____

10% DISCOUNT ALLOWED FOR ALL CASH PAYMENT

PLAINTIFF'S EXHIBIT 12

DRILLING REPORT—from JOINER'S PARAMOUNT WELL—
A. L. Anthony Drilling Contractor
Post Office Box 283 · Brady, Texas.
November 29, 1941

MR. C. M. JOINER
P. O. Box 634
Dallas, Texas.

DEAR MR. JOINER:

I am pleased to report that your Paramount Well in McCulloch County, is now drilling ahead at a depth of 1,275 feet in a brown sandy shale.

Progress has been quite slow due to the fact that we have only been drilling by daylight. Last week we had some engine trouble, but I have completely over-hauled my power and as per your instructions I am arranging to put on double crews and drill 24-hours per day, and the well should be completed very rapidly.

Will keep you posted daily as to progress and formations.

I am glad that you intend to personally inspect this operation within a few days, hoping to see you soon, I am,

Sincerely yours,

(signed) A. L. ANTHONY
Drilling Contractor

COPY OF DRILLING REPORT RECEIVED BY C. M. JOINER
COURTESY OF MILLER LEASING COMPANY

(Envelope as follows)

Miller Leasing Company
1318 Wood Street
Dallas, Texas.

Postmarked
Dallas, Texas
Dec. 1, 1941 9:30 PM
6¢ air mail stamp affixed

DEC 12

(addressed to) Mr. Frank Schneider
General Delivery
Los Angeles, California

Plaintiff's Exhibit 12

MILLER LEASING COMPANY

OIL GAS AND MINERAL LEASES
1318 Wood Street,
Dallas, Texas.

Gentlemen: I have read DRILLING REPORT from Mr. A. L. Anthony to Mr. C. M. Joiner, dated November 29, 1941, and desire to purchase an Oil and Gas Lease at the SPECIAL PRICE now being offered by you.

5-ACRES LEGALLY RECORDED IN THE
RECORDS OF MCCULLOCH CO. TEXAS $25.00

I am to receive a Recorded Oil and Gas Lease, issued in my name, conveying ownership to a FULL commercial OIL and GAS LEASE on a certain described tract of land.

Date ..... Name .....

Address .....

Make all Checks or Money Orders
payable to
MILLER LEASING COMPANY, Dallas, Texas.

(Envelope attached)

.....

.....

(addressed to) MILLER LEASING COMPANY
1318 Wood Street
Dallas, Texas

P. O. Box 341

PLAINTIFF'S EXHIBIT 13

C. M. JOINER LEASING CORPORATION

Dallas, Texas

April 25, 1941

MILLER LEASING COMPANY,
Dallas, Texas.

GENTLEMEN:

I know you are familiar with the many delays incident to getting a block of leases such as the Joiner Leasing Corporation's Paramount Block to appreciate the delay, however, I am pleased to announce that everything is in order and the machinery will be moved to the location for first well and installed on or before the 12th day of May and we expect to spud in on that date or earlier.

This is an interesting location and the drilling well will be watched with great interest and the results reported to you as well progresses. Let us visualize and hope for a great thrill.

Yours very truly,

C. M. JOINER, President
Joiner Leasing Corporation

CMJ.D

SUSIE A.

Pay 14

Assignment of Oil and Gas Lease No.

day of

and

County of McCu[illegible] and State of [illegible]

8) 282 acres, a[illegible] Nor[illegible] ...o. 44 ori... Certs No. 33/3271, A[illegible] No. 1925, [illegible] Vol. 218, [illegible] ...eptember 5th, 1929, recorded [illegible] Vol. 214, Page 214, [illegible] ...eries, and containing 1,693.47 acres of land, more or less- [illegible] ...art No. 7, of above described tract [illegible] ...re, said tract [illegible] ...No. 2.

Said lease being recorded [illegible] ...Book #102 Page #108 - - - - - - - - - and

Whereas the said lease and all rights thereunder [illegible] ...now owned by

C. M. JOINER LEASING CORPORATION

Now, Therefore, for and in consideration of [illegible] ...dollars and other good and valuable considerations), the receipt of which is hereby acknowledged, the undersigned [illegible] ...hereby sell, assign and convey unto the said lease and all rights thereunder or incident thereto, [illegible] ...hereby bargain, sell, assign and convey unto the said all rights, title and interest of the original lessee and [illegible] ...said lease and all rights thereunder in so far as it covers the following tract of land:

Being the [illegible] ...of the South-east quarter of the South-east quarter of the West one hundred sixty Acres- (W½-SW -SE¼-W.160 Ac.) of the West 282 acre tract, [illegible] ...LOTTIE RANDALS, being out of the N. one half of the A.M. Waldrip Survey No.146, Cert.#33/3271, Abst.No.1925, McCulloch County, Texas.

CONVEYING HEREIN TWO AND ONE [illegible] ...RES, MORE OR LESS.

together with all personal property used or obtained in connection therewith to

owned by

C. M. JOINER LEASING CORPORATION

Now Therefore, for and in consideration of [illegible] tions), the receipt of which is hereby acknowledged, [illegible] lease and all rights thereunder or incident thereto, [illegible] all rights, title and interest of the original lessee [illegible] thereunder in so far as it covers the following tract [illegible]

Being the [illegible] South-west quarter of the South-east quarter of the west one hundred (100) Acres-(NW¼-SW¼-SE¼-W.100 Ac.) of the West 282 acre tract, [illegible] LOTTIE RANDALS, being out of the N. one half of the A.M. Waldrip Survey No.146, Cert.#33/3291, Abst.No.1725, McCulloch County, Texas.

CONVEYING HERE [illegible]

together with all [illegible]

MILLER LEASING COMPANY [illegible]

And for the same consideration, the undersigned for itself, its successors and representatives, does covenant with the said assignee ITS successors or assigns that C. M. Joiner Leasing Corporation is the lawful owner of the said lease and rights and interests thereunder as herein assigned and of the personal property thereon or used in connection therewith; that the undersigned has good right and authority to sell and convey the same and that all rentals and royalties accruing thereunder have been duly paid to date.

Note: This Lease carries an annual rental of $1.00 per acre payable to the [illegible]

at the BRADY NATIONAL Bank of BRADY, TEXAS before the 12th day of MARCH of each year hereafter during the primary term of said Lease. The primary term of said Lease expires March 12th, [illegible]

In Witness Whereof, The undersigned has caused this instrument to be signed by its duly authorized officers and its corporate seal affixed hereto this 15th day of MAY A.D. 1941

C. M. JOINER LEASING CORPORATION

Attest: [signature] Secretary

By [signature] Its President

Exhibit A

THE STATE OF TEXAS,
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for the County and State aforesaid, on this day personally appeared JNO. T. JOHNSON known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 22nd day of APRIL A. D. 1941

Notary Public in and for Dallas County, Texas

603

No. 36

ASSIGNMENT OF OIL AND GAS LEASE

From

C. M. JOINER

LEASING CORPORATION

To

MILLER LEASING COMPANY

To

Miss Sunie A. Conway

512 Cook Street

Denver, Colorado

APR 23 1941

Deputy

County Court, McCulloch County

Geo. C. Parker

THE STATE OF TEXAS }
COUNTY OF DALLAS }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C.M. JOINER - - - - - - - - - - - - - - known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said C M JOINER LEASING CORPORATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 22nd day of APRIL A D 1941

Bailey B Gaylor
Notary Public in and for Dallas County, Texas

KNOW ALL MEN BY THESE PRESENTS, That, I JNO T JOHNSON operating as Miller Leasing Co for and in consideration of the sum of One ($1.00) Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, have this day assigned, transferred, conveyed and sold unto

MRS SUSIE A. CONWAY - - - - all of my right, title and interest in and to the foregoing oil and gas lease as described and set out in the assignment on the reverse side hereof, and the assignee herein accepts same and assumes the payment of the rentals as stipulated therein.

Dated at DALLAS, TEXAS this 22nd day of APRIL, A D 1941

MILLER LEASING COMPANY
By Jno. T. Johnson

THE STATE OF TEXAS }
COUNTY OF DALLAS }

BEFORE ME, the undersigned authority, a Notary Public, in and for the County and State aforesaid, on this day personally appeared JNO. T. JOHNSON, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 22nd day of APRIL - - - - - - - - - A D 1941

Bailey B. Gaylor
Notary Public in and for Dallas County, Texas

613

ASSIGNMENT OF GAS LEASE

From JOINER

To CORPORATION

COMPANY

25 1941

PLAINTIFF'S EXHIBIT 17

C. M. JOINER LEASING CORPORATION

P. O. Box 634

Dallas, Texas

July 24, 1941

Securities and Exchange Commission
Received
Fort Worth Regional Office
Jul 24, 1941 11

DEAR FRIEND:

We are pleased to report our Concho County well drilling at approximately 2510 feet in a very good formation. We are sending out 800 feet of 8¼ inch casing to be run in the McCulloch County well tomorrow. Both wells should be completed during next month (August). These wells are in adjoining counties but are two separate blocks.

These developments should be of short duration therefor we are here offering you leases around these two wells at a price and terms in the reach of all. You may have ten acres around one or both wells at *$5.00 per acre cash payable by August 1st, 1941 and $5.00 per acre additional payable November 1st, 1941 or thirty days after both wells are completed.* This offer is very LIMITED and your order must be in the mail by August 1st. 1941. If it is in the mails when and if we strike the pay your order will be filled, and we feel sure that you will have no opportunity later to invest in leases around either of these two wells.

This offer goes to you who now have a lease around one or both of these locations, and also to you who have at sometime invested in a lease or leases around some well that the C. M. Joiner Interests have drilled.

If you have sustained any losses in your investments in leases this looks like a good chance for you to make a winning. No one can tell where Mother Earth will give up her hidden treasures but we do know that the indications are good for production at these two locations. An investment in leases around both locations would give you a double chance to realize a profit as they are two separate developments.

"Because these securities are believed to be exempted from registration, they have not been registered with th Securities and Exchange Commission; but such exemption, if available, does not indicate that the Securities have been either approved or disapproved by the Commission or that the Commission has considered the accuracy or completeness of the statements in this communication."

We know that we are oil-minded and optimistic but we believe that we are submitting this proposition to you in language that will appeal only to business people who are interested in making an investment where they have a good chance for splendid returns on the investment.

With very best wishes to you at all times,

Yours very truly,

C. M. JOINER LEASING CORPORATION

CMH/D

By C. M. JOINER

APPLICATION CONCHO AND MCCULLOCH COUNTIES LEASES

Jul 24, 1941
11
Securities and Exchange Commission
Received
Fort Worth Regional Office

C. M. JOINER LEASING CORPORATION
Dallas, Texas.

GENTLEMEN:

I hereby subscribe for ten acres in your Concho County Block AND, OR ten acres in your McCulloch County Block at the price of $5.00 per acre cash, a total of $ which I enclose herewith. The balance of $5.00 per acre to be paid November 1, 1941 or thirty days after both wells are completed.

Name

Address

(This offer covers either or both blocks. Please indicate which you desire)

PLAINTIFF'S EXHIBIT 18

C. M. JOINER LEASING CORPORATION

P. O. Box 634

Dallas, Texas

Aug 16 1941
9

August 15, 1941

Securities and Exchange
Commission
Received
Fort Worth Regional Office

DEAR FRIEND:

"There is a tide in the affairs of men which if taken at the flood leads on to fortune."

When we last wrote you we thought that our Concho County well and our McCulloch County well would be completed during this month and that possibly you might not have another opportunity to become interested in leases around these locations, but as we are having to run an additional string of casing down to 2600 feet in the Concho well, it will delay the completion of it which may be fortunate for you. The McCulloch well is around 830 feet and underreaming casing down to 800 feet.

There is not a sacrifice that we can make which you are not entitled to and it is truly a pleasure to us to make this offering of leases around our Concho and McCulloch wells which are located in adjoining counties. This offer is in the reach of all and one which should be acceptable to the small or large investor as your financial condition may justify.

TAKE SPECIAL NOTICE: *These leases are being offered to you at $5.00 per acre all cash in five to forty acre tracts. If you take twenty acres or more you may deduct five per cent.*

You may buy around the Concho well or around the McCulloch well or divide the investment by taking one-half around one well and one-half around the other, but we certainly advise that you do not take less than five acres at each location, and you should make it twenty if possible for you to do so.

If you have already purchased leases around these locations at a greater price you in no way can be hurt by our making it possible for more people to become interested. The more people who invest in a townsite the more valuable the property becomes, which is equally true in buying into a block of leases where production is found. Due to the many small investors in the C. M. Joiner East Texas block, which the writer of this offering owned, that field became the largest oil field in the world as each investor had an opportunity to develop, have developed or handle his particular lease as he wished, which resulted in around 30,000 wells being drilled.

"Because these securities are believed to be exempted from registration, they have not been registered with the Securities and Exchange Commission; but such exemption, if available, does not indicate that the Securities have been either approved or disapproved by the Commission or that the Commission has considered the accuracy or completeness of the statements in this communication."

There has nothing happened to either of these wells that would lessen the prospects for the opening of a new oil field. The only difference is the price at which we are offering these leases and the price of from $25.00 to $50.00 per acre which many of you no doubt have paid for leases purchased from other persons. The leases we are offering will be well located, and you will know on reading this if you have paid many times this price for leases around drilling wells.

I am trying to impress on you that this is an extraordinary offer, one that possibly has never gone to you before and may never be offered you again. We feel that if we are to get the law of average that one or both these wells should be pro-

ducers. I know you would like the thrill that comes to those owning a lease around a producing well. Do not hesitate to purchase a lease near these wells and visualize with us for the anticipated thrill.

There has been a tremendous advance in the price of materials and labor incident to drilling wells. It is also true that oil is advancing, and in our opinion, will continue to advance until it doubles the price we are now getting; so we know of no investment of greater promise than an investment in an oil lease around a drilling well in the State of Texas.
Get your order in the mail and if the wells should come in as producers before it reaches us you will get your lease. With all good wishes,

Yours very truly,

C. M. JOINER LEASING CORPORATION
By C. M. JOINER,
President

CMJ/D

CLIMAX!

In a continuation of our efforts to make you money, if you send in an order for twenty acres around either or both of these wells, after the date of this letter, you will get ten acres FREE *in the next block of acreage we drill which is most likely to be in Concho County, Texas. You will really be in the oil business.*

APPLICATION CONCHO & MCCULLOCH LEASES

Date: Aug 16 1941

C. M. JOINER LEASING CORPORATION,
Dallas, Texas.

9
Securities and Exchange
Commission RECEIVED
Fort Worth Regional Office.

GENTLEMEN:

I am taking advantage of your offer of August 15th. and hereby subscribe for —— acres at $5.00 per acre, total of $——— which I enclose herewith. *If this order is for twenty acres it is understood that I am to receive* FREE *ten acres in the next block of leases you drill.*

Name .....

Address .....

PLAINTIFF'S EXHIBIT 19

C. M. JOINER LEASING CORPORATION

Aug. 30, 1941

P. O. Box 634 1

Dallas, Texas - Securities and Exchange Commission
Received
Fort Worth Regional Office

August 30, 1941

DEAR FRIEND:

The letter we sent you on August 15th, regarding our development in Concho and McCulloch Counties, Texas, has not had the response that we anticipated or that it was entitled to which leads us to think that the reduction in price was taken that we had less faith in our propositions when the contrary is true.

Our letter of that date went to you and others who had invested around some of our wells without realizing a profit, and the offering made at the price of $5.00 per acre is as near a gift offer as it is possible for us to make, and as soon as both wells are drilling at interesting depths, with the third string of casing run in each well, we feel sure that you have never had an offering such as this and possibly may never have another like it. We are taking up another block of leases in Concho County not far removed from the well we are now drilling which is conclusive proof that we have faith in that territory.

For a limited time your order will be accepted for five acres or more around either or both these locations at the price of $5.00 per acre cash. For each order of twenty acres you will receive in the next block of acreage we drill ten acres FREE.

We feel that you should sent your order in for as much as you can without its distressing you financially, for as a speculative investment we know of none more promising. Remember, if YOU do not make money on your investment it will be impossible for us to make money. We must find oil in paying quantities to recoup the losses we would take in the drilling of these two wells.

"Because these securities are believed exempted from registration, they have not been registered with the Securities and Exchange Commission; but such exemption, if available, does not indicate that the Securities have been either approved or disapproved by the Commission or that the Commission has considered the accuracy or completeness of the statements in this communication."

We believe that if you do not make an investment in our Concho and McCulloch blocks now that you may regret it later. Do not hesitate to mail in your order on receipt of this as a great effort is being made to complete both wells next month, one of which might go into the pay at any stroke of the bit. Your order and remittance in the mail entitles you to your lease assignment which will go forward to you without delay. Fortunes made in oil go to those who invest. We believe you should invest here, and now!

Yours very truly,

C. M. JOINER LEASING CORPORATION

By C. M. JOINER,
President

CMJ/D

PLAINTIFF'S EXHIBIT 20

McCULLOCH COUNTY

LEASE SALES BY C. M. JOINER LEASING CORPORATION FROM JULY 16, 1941 TO SEPTEMBER 10, 1941

Name	Paid	Date	No Acres
Mrs. Pearle Currin 3327 Beverly Drive, Dallas, Texas.	$100.00	July 23, 1941	20 full payment
Miller Leasing Company	42.50	July 29, 1941	
Miller Leasing Company	50.00	July 31, 1941	
Miller Leasing Company	50.00	July 30, 1941	
Miller Leasing Company	25.00	August 7, 1941	
Miller Leasing Company	13.50	August 26, 1941	
Miller Leasing Company	25.00	August 16, 1941	
W. F. Jungk 360 14th St., San Diego, California.	25.00	August 4, 1941	5 acres
Rementa Hutchinson 670 Wilshire Place, Los Angeles, Calif.	5.00	August 1, 1941	5 acres
Lenore Helhake 838 Olive Ave., Long Beach, Calif.	25.00	August 2, 1941	full payment 5 acres
J. W. Reddish 3028 Heeward, Los Angeles, Calif.	25.00	August 2, 1941	5 acres
Myrtle Morgan 1520 Glenarm Place, Denver, Colorado.	10.00	August 5, 1941	10 acres
Victoria Kelz P. O. Box 3405 Portland, Oregon	25.00	August 5, 1941	5 acres
Alma Robinson 1257 Laguna Ave., Burlingame, Calif.	5.00	July 31, 1941	5 acres
Alma Robinson "	27.50	August 8, 1941	same acreage
B. E. Cowles Forestville, Conn	47.50	August 25, 1941	10 acres full pmt.
Susie Conway 512 Cook St., Denver	12.50	August 25, 1941	2½ acres full pmt

Name	Paid	Date	No Acres
F. J. Pritham, Greenville Jct., Maine	25.00	August 25, 1941	5 acres full pmt
S. E. Mutz 1925 Boone Ave., Spokane, Washington	25.00	August 26, 1941	5 acres full pmt
J. M. Frazier 236 Los Robles Ave., Puenta, Calif.	25,00	Sept. 2, 1941	5 acres full pmt.

Sept 17 1941
4
SECURITIES AND EXCHANGE COMMISSION
RECEIVED
FORT WORTH REGIONAL OFFICE

Grace Smith Tourist Camp, Logan Ohio	$12.50	Sept. 2, 1941	10 acres
G. M. Romberger, Millersburg, Pa.	12.50	Sept. 2, 1941	10 acres
Mrs. Margaret Martin Glenwood, Iowa	25,00	Sept. 4, 1941	5 acres full pmt.
Mr. S. Bourdon 318 Jackson St., Willimantic, Conn	12.50	Sept. 5, 1941	2½ acres full pmt
Boyd Means Box 178 Palos Verdes Estates, Calif.	47.50	Sept. 5, 1941	10 acres full pmt
Austin Rogers, Soldiers Home, Washington, D. C.	12.50	Sept. 6, 1941	2½ acres full pmt
G. H. Harris, 1337 Exline, El Monte, Calif.	25.00	Sept. 6, 1941	5 acres full pmt
Emma Lillie 2530 Myrtle, Hermosa Beach, Calif.	12.50	Sept. 6, 1941	2½ acres full pmt
Myrtle Morgan, 1520 Glenarm Place, Denver, Colorado.	10.00	Sept. 9, 1941	same 10 acres as listed above, this being final pmt.
Total	$758.50		115

PLAINTIFF'S EXHIBIT 21

PERSONS TO WHOM MILLER LEASING COMPANY SOLD LEAVES IN McCULLOCH COUNTY BLOCK TO SEPTEMBER 10, 1941

Sep 22 1941
11
SECURITIES AND EXCHANGE
COMMISSION
RECEIVED
FORT WORTH REGIONAL OFFI

W. W. Holland
Eau Claire, Wisconsin

Dana W. Drury

P. P. Lum

Harry Wicks,
McMinnville, Oregon

B. R. Barton
Pullman, Washington

Hulda Russell,
Weldon, Calif.

W. H. Murphy
Anderson, Indiana

Bert Menachof
801 W. 7th St.,
Cincinnatti, O.

A. H. Knight
Box 287
W. Warwick, R. I.

Mrs. W. E. Spriggs
155 Springfield,
Washington, Pa.

O. B. Kyte

Dan Eichoff
Electric City, Wash

O. S. Van Deussen
Steamboat Springs, Colo.

Sidney Atkinson
130 S. Willard
San Jose, Calif.

A. E. Charleston,
909 S. Gramercy
Los Angeles, Calif.

Oscar Soderholm
100 Locust,
Worcester, Mass

E. B. Cowan

H. A. Sublett

E. W. Campbell
Box 708,
Anderson, India.

Carolyn Richards
Box 625
Lawrence Mass

Otto Ofer

Hilda Reimer

A. C. Charters

Margie C. James
1415 James St,
Los Angeles, Calif

Jennie Becker
Box 5
E. Carondelet, Ill

Mary Helmore
1738 3rd
E. Oakland, Calif

Ida M. Hoover
Box 6636 N Side St.,
Pittsburgh, Pa.

J. M. Hanson
Box 488
Compton, Calif

May G. Thompson
520 Orante
Santa Ana, California

A. L. Hart

Effie Copeland
1111 4th.,
Santa Monica, Calif

William Black
Box 183
San Luis Obispo, Calif.

Margaret Martin
Glenwood, Iowa

F. J. Dinwiddie

L. Peake
496 Taft
akland, Calif.

S. Lum

F. Woodbury
atten, Maine

C. Caltrider
6 Main St.,
eisterstown, Md.

Irs. R. N. Barnhart

Anna Fridolph
25 E. 53rd
New York, N. Y.

Belle Lyle
Dalton, Washington

Eva B. Phoenix
Delavan, Wisconsin

Esther Sparrow
109 Sherman St.,
Wollaston, Mass

J. B. McFarlane

Myrtle Hugus
Box 2222
Sacramento, Calif.

A. E. McGovern

E. B. Moore
337 S. Los Angeles
Los Angeles, Calif

Hilda Reimer

Frank Schneider
929 N. Hazard, L. A.

E. O. Arrington

R. O. Barnhard
Box 294
Livermore, Calif.

F. F. Clayton
Susie Conway

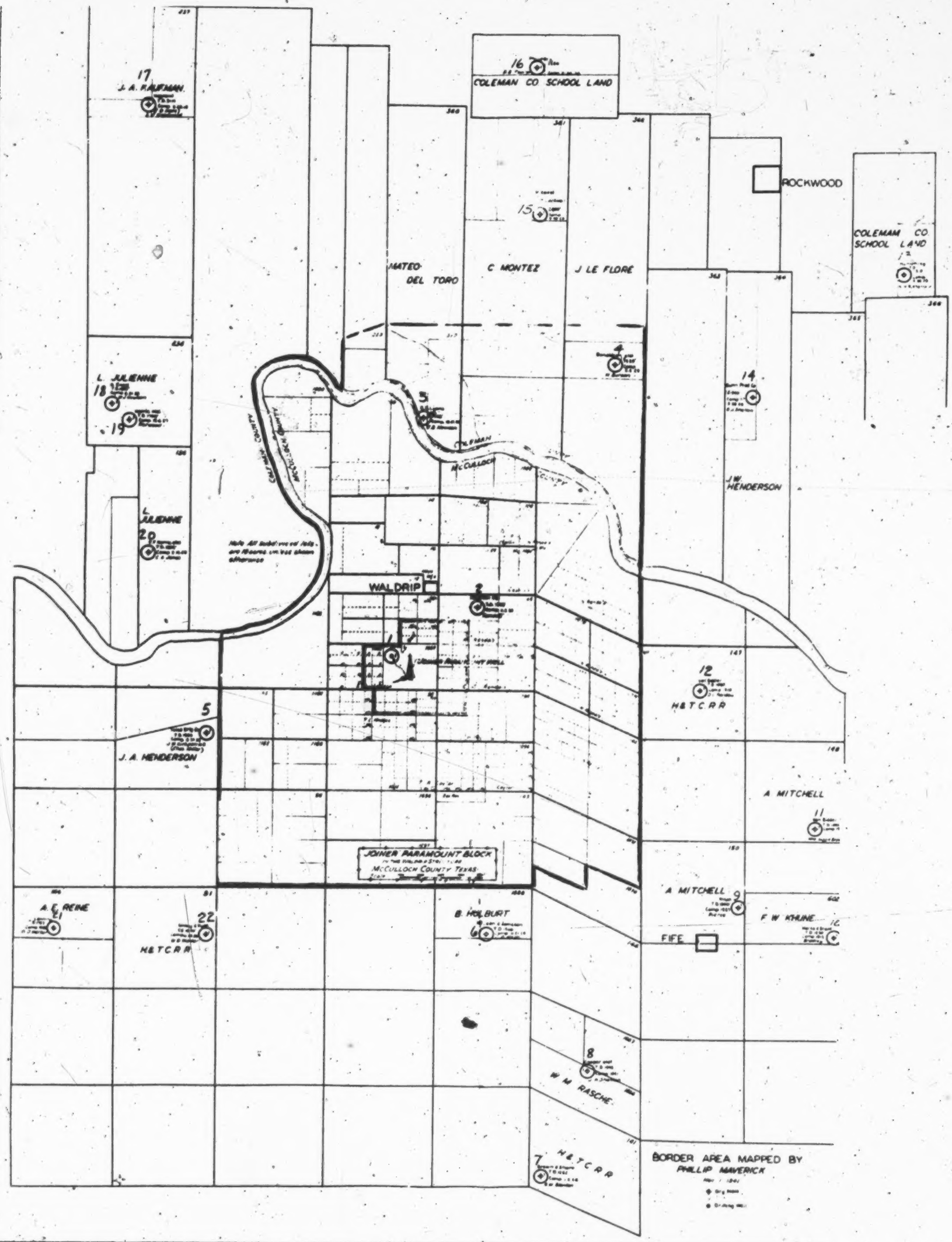
Burdette Cowles

Grace Smith,
Tourist Campt
Logan, Ohio.

Louis Smith
418 H St.,
Coronado, Calif.

C. T. Smith
Veterans Adm.
San Francisco, Cal.

Neelie H. Chase,
2103 Virginia, La.


17
J. A. KAUFMAN
16
COLEMAN CO SCHOOL LAND
ROCKWOOD
COLEMAN CO SCHOOL LAND
15
MATEO DEL TORO
C MONTEZ
J LE FLORE
L JULIENNE
18
19
L JULIENNE
20
14
J W HENDERSON
McCULLOCH COUNTY
WALDRIP
5
J. A. HENDERSON
12
H&TCRR
A MITCHELL
11
JOINER PARAMOUNT BLOCK
McCULLOCH COUNTY TEXAS
A MITCHELL
9
F W KRAUSE
A. E. REINE
21
22
H&TCRR
B. HOLBURT
6
FIFE
8
W M RASCHE
7
H&TCRR
BORDER AREA MAPPED BY
PHILLIP MAVERICK

PLAINTIFF'S EXHIBIT 23

UNITED STATES OF AMERICA

SECURITIES AND EXCHANGE COMMISSION

I, Phillip L. Charles, Chief, Docket, Mail and Files Section of the Securities and Exchange Commission, Washington, D. C., which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C.A., Sec. 78a et seq), and acting official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission, pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, do hereby certify that:

A diligent search has this day been made of the books and records of this Commission, and the books and records do not disclose that any filing has ever been made with this Commission covering offering and sale of assignments of oil and gas leases on properties located in McCulloch County, Texas, under the name of C. M. Joiner Leasing Corporation, C. M. Joiner, John T. Johnson or Miller Leasing Company, pursuant to the provisions of the Securities Act of 1933 and or the Securities Act of 1933 as amended, and the rules and regulations thereunder.

In witness whereof I have hereunto subscribed my name and caused the seal of the Securities and Exchange Commission to be affixed this 13th day of February, A.D. 1942, at Washington, D. C.

PHILIPP L. CHARLES,
Chief, Docket, Mail and Files Section.

(SEAL)

PLAINTIFF'S EXHIBIT 24

THE STATE OF TEXAS

COMPTROLLER'S DEPARTMENT

I, Geo. H. Sheppard, Comptroller of Public Accounts of the State of Texas, do hereby certify that the statutes codifying as Article 7057 A, Vernon's Annotated Revised Civil Statutes, of the State of Texas, provides that the crude oil producer shall file sworn reports with this office on or before the twenty-fifth day of the month setting out the production of crude oil for the previous month, in which he is to show the name of the lease and the name of the county in which the lease is located.

I further certify that the records of this department fail to disclose that any production reports required of the above State statute have been filed with this office showing that crude oil has been produced in McCulloch County, Texas, during the period September 1, 1938 to date.

In testimony whereof, I hereunto sign my name officially and cause my official seal to be impressed hereon at my office in the City of Austin, Texas, this 4th day of March, A.D. 1942.

GEO. H. SHEPPARD,
State Comptroller of Public Accounts.

(SEAL)

THE STATE OF TEXAS

DEPARTMENT OF STATE

I, Wm. J. Lawson, Secretary of State of the State of Texas, do hereby certify that, according to the records of this office, Geo. H. Sheppard, whose name is subscribed to the annexed and foregoing is the State Comptroller of Public Accounts, that he, Geo. H. Sheppard was elected to this office on the 5th day of November, 1940, he qualified

on the 2nd day of January, 1941 and was commissioned to act as such on the 3rd day of January, 1941; that he is the official Custodian of the Records referred to on the attached and foregoing instrument.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 5th day of March, A.D. 1942.

WM. J. LAWSON,
Secretary of State.

(SEAL)

STIPULATION AS TO CONTENTS OF PLAINTIFF'S EXHIBIT NUMBER 25

(Filed August 24, 1942.)

It is hereby stipulated and agreed by and between the Plaintiff and the defendants C. M. Joiner Leasing Corporation and C. M. Joiner that Plaintiff's Exhibit Number 25 consists of authenticated copies of assignments of oil and gas leases as same appear in the Deed Records of McCulloch County, Texas, as follows, and that this stipulation be incorporated in the record on appeal in lieu of copies of each of such assignments:

1. Assignment by C. M. Joiner Leasing Corporation of 2½ acres oil and gas lease in SW¼ SW¼ SE¼ W 160 acres Nat Randall tract, A. M. Waldrip Survey, McCulloch County, Texas, to Miller Leasing Company, dated April 22, 1941, and reassignment of lease on same date by Miller Leasing Company to Susie A. Conway. Recorded V. 102, P. 136.

2. Assignment by C. M. Joiner Leasing Corporation of 2½ acres oil and gas lease covering the NW¼ SW¼ SE¼ W. 160 acres Nat Randall tract, Waldrip Survey, McCulloch County, Texas, to Miller Leasing Company, dated May 15, 1941, and reassignment of the lease on the same date by Miller Leasing Company to Susie A. Conway. Recorded V. 106, P. 164.

3. Assignment by C. M. Joiner Leasing Corporation of 2½ acres oil and gas lease covering the SE¼ SE¼ of No. 40 of the W. 80 of T. L. Hodges tract, H. and T. C. RR Co. Survey No. 95, McCulloch County, Texas, to Susie A. Conway, dated August 30, 1941. Recorded V. 102, P. 226.

4. Assignment by C. M. Joiner Leasing Corporation of 5 acres oil and gas lease covering South 5 acres of N. 31 acres of J. W. Hill E. 62 acre tract N½ of H. and T. C. RR. Co. Survey No. 95, McCulloch County, Texas, to Miller Leasing Company, dated April 23, 1941, and reassignment of the lease on same date by

Miller Leasing Company to Dr. F. J. Pritham. Recorded, V. 102, P. 147.

5. Assignment by C. M. Joiner Leasing Corporation of oil and gas lease covering the N½ NW½ NW¼ N. 40 acres W. 80 acre T. L. Hodges 290 acre tract, H. and T. C. RR. Co. Survey No. 95, McCulloch County, Texas, to F. J. Pritham, dated August 30, 1941. Recorded in V. 102, P. 237.

6. Assignment by C. M. Joiner Leasing Corporation of 5 acres oil and gas lease covering N½ SW¼ SE¼ W. 160 acres, Clay Randall 282 acre tract, S½ A. M. Waldrip Survey, McCulloch County, Texas, dated April 28, 1941, and reassignment of lease on same date by Miller Leasing Company to Stanislas Bourdon. Recorded in V. 102, P. 154.

7. Assignment by C. M. Joiner Leasing Corporation of 2½ acre oil and gas lease covering SW¼ SW¼ N 40 acres of W. 80 acres, T. L. Hodges 290 acre tract, H. and T. C. RR. Co. Survey No. 95, McCulloch County, Texas, dated September 9, 1941. Recorded V. 102, P. 241.

8. Assignment by C. M. Joiner Leasing Corporation 8 acre oil and gas lease covering No. 8 acres S 16 acres E 32 acres of S. A. Lawson 160 acre tract, Valentine Hohmann Survey No. 1092, McCulloch County, Texas, to Miller Leasing Company, dated February 6, 1942 and reassignment of lease on same date by Miller Leasing Company to Edwin F. Holt. Recorded V. 102, P. 281.

9. Assignment by C. M. Joiner Leasing Corporation of 10 acre oil and gas lease covering N. 10 acres of S. 20 acres, Nat Randall 63 acre tract, V. Hohmann Survey No. 1086, McCulloch County, Texas, to Miller Leasing Company, dated January 21, 1942 and reassignment of lease on same date by Miller Leasing Company to Eva B. Phoenix. Recorded V. 102 P. 283.

10. Assignment by C. M. Joiner Leasing Corporation 2½ acre oil and gas lease covering SW¼ N. 10 acres S. 20 acres W. 40 acres E. 105 acres, T. L. Hodges 290 acres tract, H. and T. C. RR Co. Survey No. 95, McCulloch County, to Miller Leasing Company, dated

January 21, 1942 and reassignment of lease on same date by Miller Leasing Company to C. A. Powers. Recorded V. 102, P. 297.

R. F. MILWEE, JR.,
Attorney for Plaintiff.

D. A. FRANK,
Attorney for Defendants C. M. Joiner Leasing Corporation and C. M. Joiner.

Dated: August 24, 1942.

JUDGMENT

(Filed June 2, 1942.)

On this 21st day of May, A. D. 1942, came on to be heard the above entitled and numbered cause and plaintiff and defendants, C. M. Joiner Leasing Corporation and C. M. Joiner, all being present in Court in person and by Attorney, each announcing ready for trial and thereupon the Court, having heard the pleadings and the evidence of the witnesses, is of opinion that the law is with the defendants and that no injunction should issue herein.

It is therefore ordered and decreed that the petition of plaintiff for injunction herein be and the same is hereby denied as to the defendants, C. M. Joiner Leasing Corporation and C. M. Joiner and that such defendants be allowed to go hence without day, to all of which order the plaintiff excepts and its exceptions are allowed.

WM. H. ATWELL,
Judge.

APPROVED as to form:

R. F. MILWEE, JR.

O. H. ALLRED,
Attorneys for Plaintiff.

D. A. FRANK,
Attorney for Defendants.

NOTICE OF APPEAL

(Filed August 10, 1942.)

NOTICE is hereby given that the Securities and Exchange Commission, plaintiff in the above entitled and numbered action, hereby appeals to the Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this action on May 21, 1942.

Dated, August 10, 1942

CHESTER T. LANE,
General Counsel
O. H. ALLRED,
Attorney
R. F. MILWEE, JR.,
Attorney
Attorneys for Plaintiff
Securities and Exchange
Commission
Room 103, U. S. Courthouse
Fort Worth, Texas

STATEMENT OF POINTS

(Filed August 24, 1942.)

In its appeal, appellant, plaintiff in the above entitled action, intends to rely solely upon the point that the District Court erred in concluding that the defendants were not engaged in the sale and in the offering for sale of a "security" within the meaning of Section 2(1) of the Securities Act of 1933, as amended. (15 U.S.C. § 77b(1)).

Dated, August 24, 1942

Copy this date served upon D. A. Frank, Attorney for defendants C. M. Joiner Leasing Corporation and C. M. Joiner.

CHESTER T. LANE,
General Counsel
O. H. ALLRED,
Attorney
R. F. MILWEE, JR.,
Attorney
Attorneys for Plaintiff
Securities and Exchange Commission,
Room 103, U. S. Courthouse
Fort Worth, Texas

DESIGNATION OF RECORD

(Filed August 24, 1942.)

Appellant, plaintiff in the above entitled action, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled action:

1. Complaint for final judgment, filed and served on February 16, 1942.

2. Answer of C. M. Joiner Leasing Corporation and C. M. Joiner, filed on March 5, 1942.

3. Motion of the Plaintiff for entry of permanent injunction against John T. Johnson, and notice of motion, filed on March 10, 1942.

4. Consent of John T. Johnson to entry of permanent injunction against him, filed on March 10, 1942.

5. Permanent injunction, by consent, entered against John T. Johnson on March 16, 1942.

6. Transcript of proceedings before Judge Atwell on trial on merits on May 21, 1942.

7. Copies of documents introduced in evidence before Judge Atwell on trial on merits on May 21, 1942, with the exception of Plaintiff's Exhibit No. 25.

8. Stipulation as to contents of Plaintiff's Exhibit No. 25.

9. Transcribed oral opinion of Judge Atwell, rendered on May 21, 1942.

10. Final judgment denying an injunction entered on June 2, 1942.

11. Notice of appeal with date of filing.

12. Statement of points to be relied upon by plaintiff in its appeal.

13. This designation of record.

CHESTER T. LANE,
General Counsel
O. H. ALLRED,
Attorney
R. F. MILWEE, JR.,
Attorney
Attorneys for Plaintiff
Securities and Exchange Commission
Room 103 U. S. Courthouse
Fort Worth, Texas

Dated, August 24, 1942

Copy served upon D. A. Frank, Attorney for defendants C. M. Joiner Leasing Corporation and C. M. Joiner, August 24, 1942.

D. A. FRANK.

CLERK'S CERTIFICATE

I, GEORGE W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record and all proceedings in cause Number 642 Civil, Wherein Securities and Exchange Commission is plaintiff, and C. M. Joiner Leasing Corporation, C. M. Joiner and John T. Johnson, individually and trading under the style Miller Leasing Company, are defendants, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 8th day of September, A. D. 1942.

GEORGE W. PARKER, *Clerk*
U. S. District Court,
Northern District of Texas.

[SEAL]

By RAMELLE HAMILTON,
Deputy

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission

Extract from the Minutes of November 13, 1942

No. 10440

SECURITIES AND EXCHANGE COMMISSION

v.

C. M. JOINER LEASING CORPORATION ET AL.

On this day this cause was called, and, after argument by Louis Loss, Esq., Attorney, Securities and Exchange Commission, for appellant, and D. A. Frank, Esq., for appellees, was submitted to the Court.

Opinion of the Court and Dissenting Opinion by Hutcheson, Circuit Judge,

Filed February 1, 1943

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 10440

SECURITIES AND EXCHANGE COMMISSION, APPELLANT,

v.

C. M. JOINER LEASING CORPORATION ET AL., APPELLEES

Appeal from the District Court of the United States for the Northern District of Texas

(February 1, 1943)

Before SIBLEY and HUTCHESON, Circuit Judges, and KENNERLY, District Judge.

KENNERLY, District Judge: This suit was filed in the District Court February 16, 1942, by Appellant, the Securities and Exchange Commission, against Appellees, the C. M. Joiner Leasing Corporation (for brevity called Corporation) and C. M. Joiner. John T. Johnson, individually and trading as the Miller Leasing Company, was also sued, but the case as to him was disposed of by Agreed Decree in favor of Appellant.

The suit arises under the Securities Act of 1933 (Title 15, Sections 77a to 77aa, 48 Stat. 74). Appellant alleged that Corporation about

1940 became the owner of Oil and Gas Lease or Leases on 3,000 acres of land in McCulloch County, Texas, called the "Joiner Paramount Development," and that Appellees had been and were, themselves, and through Johnson, their agent, offering, in many parts of the United States, to sell or assign, and were selling and assigning, such Lease or Leases on, in and as it or they covered tracts of from 2½ to 20 acres out of the 3,000-acre tract, and in doing so were sending through the United States Mails false and misleading literature, letters, etc., with respect thereto. Claiming that such sales or assignments involved sales of a "security" as defined by Section 2 (1) of the Act, Appellant sought, under the provisions of the Act, to enjoin Appellees from so doing. The District Judge thought that such sales and assignments did not involve sales of a security, and rendered Judgment for Appellees. Appellant has appealed and is here complaining of the Judgment.

Appellant concedes that the sole question presented by its appeal is whether such sales and assignments involve sales of a security as defined by Section 2 (1) of the Act.

The facts are not greatly, if at all, in dispute. The Corporation is engaged in the business of buying and selling oil and gas leases and developing oil and gas properties in Texas. C. M. Joiner is its President and directing Head. The other officers are Joiner's wife and a secretary. All of the stock of the Corporation is owned by these officers and one Shuman. About 1940 the Corporation secured the assignment to it of Oil and Gas Lease or Leases covering about 3,000 acres of land in McCulloch County, Texas. The Record does not show the form of the Lease or Leases, but the parties have treated them as being, and presumably they are, in the form of an ordinary Texas Commercial Mineral Lease carrying an Interest in the land.[1] The Assignment to Corporation was from A. L. Anthony, a drilling contractor who had previously blocked up the acreage and acquired the lease or leases thereon. The Record does not show the form of such Assignment, but it has been treated as being and presumably is, in the form of the ordinary Texas Commercial Assignments of Oil and Gas Leases, which passes title to an interest in the land. Part of the consideration for the Assignment was the obligation of Corporation to drill a well for oil or gas on the 3,000 acres of land.

In accordance with such drilling obligation, Corporation contracted with Anthony and Anthony agreed to drill a well to a depth of 2,000 feet (unless oil or gas in paying quantities be encountered at a lesser depth) on the 3,000 acres, for which Anthony was to be paid at the rate of $2.50 per foot. At the time this contract was made, Corporation did not have sufficient funds to pay for the drilling of the well, but it expected to obtain the necessary funds principally from the sale or assignment of such Lease or Leases on and as it or they covered small tracts of land out of the 3,000 acres and surrounding the well. An-

[1] Texas Co. v. Dougherty, 107 Tex. 226, 176 S. W. 717; Stephens v. Mid-Kansas, 113 Tex. 160, 254 S. W. 290; Sheffield v. Hogg, 124 Tex. 290, 77 S. W. (2d) 1024; Downman v. Texas, 231 U. S. 353, 58 L. Ed.

thony drilled the well down to about 1,375 feet without striking either oil or gas and abandoned it about December 1941.

The Corporation and Joiner, themselves and through the medium of Johnson, have offered for sale or assignment and sold and assigned such Lease or Leases on, in and as it or they covered specific tracts varying in size from 2½ to 20 acres out of the 3,000 acres, at prices ranging from $5 to $15 an acre. The Record shows that up to September 10, 1941, sales and assignments had been made by Corporation, Joiner and Johnson to between 50 and 80 persons scattered over the United States. The form of the Assignments by Corporation to Johnson (trading as the Miller Leasing Company) is the ordinary Texas Commercial Assignment of Oil and Gas Leases and is shown by the record.[2] Likewise the form of Assignments from Johnson to purchasers.[3] The form of Assignments by Corporation directly to its purchasers is not shown by the Record, but are treated as being, and we presume they are, the same as or similar to the form of Assignment

---

[2] This form of Assignment is as follows:

"Assignment of Oil and Gas Lease. No. 62

Whereas, on the 12th day of March, 1941, a certain oil and gas mining lease was made and entered into by and between Nat Randals and wife, Lottie Randals, Lessor, and A. L. Anthony, Lessee, covering the following described land in the County of McCulloch and State of Texas, to-wit: Among other lands (8) 282 acres, more or less, the North one-half of A. M. Waldrip Survey No. 146, Certificate No. 33/3271, Abstract No. 1725, patented to D. C. Randals by Patent No. 556, Vol. #18, conveyed by Clay S. Randals and wife to Nat Randals by deed dated September 5th, 1929, recorded in Vol. #84, Page 210, Deed Records of McCulloch County, Texas, and containing 1,463.47 acres of land, more or less—Save and Except Art. No. 7, of above described tracts containing 160 acres, being Henry Dulaney Survey No. 1082.

Said lease being recorded in the office of the County Recorder in and for said County in book #102, Page #108, and

Whereas, the said lease and all rights thereunder or incident thereto as assigned herein are now owned by C. M. Joiner Leasing Corporation.

N.w, therefore, for and in consideration of One Dollar (and other good and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owner of the said lease and all rights thereunder or incident thereto, does hereby bargain, sell, transfer, assign and convey all rights, title and interest of the original lessee and present owner in and to said lease and rights thereunder in so far as it covers the following tract of land:

Being the North-west quarter, containing two and one half acres, more or less, of the South-west quarter of the South-east quarter of the West One hundred Sixty Acres—(NW¼-SW¼-SE¼-W. 160 Ac.) of the West 282 acre tract, of Nat Randals and wife Lottie Randals, being out of the N. one half of the A. M. Waldrip Survey No. 146, Cert. #33/3271, Abst. No. 1725, McCulloch County Texas.

conveying herein two and one half acres, more or less, together with all personal property used or obtained in connection therewith to Miller Leasing Company and its successors and assigns.

And for the same consideration, the undersigned for itself, its successors and representatives, does covenant with the said assignee, its successors, or assigns, that C. M. Joiner Leasing Corporation is the lawful owner of the said lease and rights and interests thereunder as herein assigned and of the personal property thereon or used in connection therewith; that the undersigned has good right and authority to sell and convey the same, and that all rentals and royalties due and payable thereunder have been duly paid to date.

Note: This Lease carries an annual rental of $1.00 per acre payable to the lease rental account of Nat Randals and wife, Lottie Randals, at the Brady National Bank of Brady, Texas, on or before the 12th day of March of each year hereafter during the primary term of said Lease. The primary term of said Lease expires March 12th, 1951.

In witness whereof, the undersigned has caused this instrument to be signed by its duly authorized officers and its corporate seal affixed hereto this 15th day of May, A. D. 1941."

[3] This form of Assignment is as follows:

"Know all men by these presents, that I, Jno. T. Johnson, operating as Miller Leasing Co., for and in consideration of the sum of One ($1.00) Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, have this day assigned, transferred, conveyed and sold unto Miss Susie A. Conway, all of my right, title, and interest in and to the foregoing oil and gas lease as described and set out in the assignment on the reverse side of this sheet, and the assignee herein hereby accepts same and assumes the payment of the rentals as stipulated therein.

Dated at Dallas, Texas, this 22nd day of April A. D. 1941."

from Corporation to Johnson. The Record also shows the form Application a purchaser was invited to make.[4]

In other words, it is clearly shown that what Corporation w offering for sale and selling and assigning was a leasehold intere in specific tracts out of the 3,000 acres, or as defined by Texas Courts an interest in the land of specific tracts out of the 3,000 acres.

With respect to the methods and representations used by Corp ration, Joiner and Johnson to secure purchasers, the Trial Judge fou fraud.[5] We approve his findings—indeed, the evidence would justi stronger findings of fraud.[6] In some instances, leasehold interest

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[4] This form of Application is as follows:

"Special Location. Application for Purchase. C. M. Joiner's Acreage—Paramount A Miller Leasing Company, 1318 Wood Street, Dallas, Texas. Gentlemen:—I have read Joiner's letter regarding his new development and desire to purchase an Oil and Gas Le at the special price now being offered by you.

5-Acres at $15.00 per acre, Total Price $75.00.

Enclosed please find $7.50 as First Payment, balance payable $12.50 per month.

Acres at $15.00 per acre, Total Price $_____.

Enclosed please find $_____ as First Payment on Five Acre Lease, balance paya $_____ per month.

Upon final payment, I am to receive a Recordable Oil and Gas Lease, issued in my na conveying ownership to a Full commercial Oil and Gas Lease on a certain described t of land. Date _____ Name _____ Address _____. Make all checks or money ord payable to Miller Leasing Co., Dallas, Texas. 10% Discount allowed for all cash payme

[5] We quote from the findings of the Trial Judge:

"The representations made in these circulars and letters which were sent out, both Joiner and Johnson, were not supported by the facts. They were not denied by some of facts either, because subsequently and quite recently, in fact, oil has been found in particular county.

What they said was not true, that this particular county was in the center of or in heart of the highest production area in Texas, it was rather remote from it, though tiguous to a shallow and a smaller production.

Mr. Joiner seems to have kept his contract with Mr. Anthony, the driller, and Antho the driller, seems to be the one who was unable to go forward in the manner he had agr to go forward with Joiner.

Joiner now has invested more funds in order to eventually satisfy himself as to productivity or non-productivity of that particular area, and has invested more than has received:

All of which I find as facts.

* * * * * * *

I do grant that these promotion schemes are of detriment to the people, no doubt ab that. They should be stopped. We have a criminal statute that will stop them. Th letters being sent out with a fraudulent intent is a fraudulent use of the mails, it does make any difference whether there is any interstate use or not, and that interstate feat does not enter into the Securities Act."

[6] One circular letter mailed to the public by Corporation and Joiner is dated August 1941, and is typical of many others. It is addressed to "Dear Friend," and its open paragraph is:

"There is a tide in the affairs of men which if taken at the flood leads on to fortune."

Its closing paragraph is:

"In a continuation of our efforts to make you money, if you send in an order for tw acres around either or both of these wells, after the date of this letter, you will ge acres FREE in the next block of acreage we drill which is most likely to be in Co County, Texas. You will really be in the oil business."

A form of order for use of purchasers is as follows:

"Application Concho & McCulloch Leases

Date: Aug. 16, 1941

C. M. JOINER LEASING CORPORATION,
Dallas, Texas.

Securities and Exch
Commission Rec
Fort Worth Regional Of

Gentlemen: I am taking advantage of your offer of August 15th, and hereby subsc for _____ acres at $5.00 per acre, total of $_____; which I enclose herewith. If this o is for twenty acres it is understood that I am to receive FREE ten acres in the next bl of leases you drill.

Name _____ Address _____

A map mailed to the public showed McCulloch County and Counties to the north, w indications of heavy oil and gas production, with this statement at the bottom of the m

"Joiner 'Paramount' Location.

"'Dad' Joiner has gone right into the heart of one of the largest producing areas in Texas; in his endeavor to make this the supreme achievement of his career. Take a g look at this map—notice how in most every direction—you'll find not just a few, literally hundreds of producing areas. Notice the map of acreage on the following pag we have only a limited amount (all we could possibly obtain in an area like this)—so earnestly advise you to get your application in at once!"

specific tracts were offered before any public announcement had been made as to the location of the "Joiner Paramount Development," the public being invited to purchase leasehold interests in then undescribed and unlocated tracts of land, the details as to location, etc. to be subsequently revealed to purchasers. Even after the location was made public, Corporation and Joiner generally made the selection of the purchasers' tract or tracts of land.

It is a matter of common knowledge that persons engaged in the oil industry in Texas and elsewhere buy, sell, assign and traffic in oil, gas and mineral leases, and particularly those covering land near producing oil or gas wells or wells being drilled. The only thing that differentiates these sales and assignments by Corporation to purchasers from the usual and ordinary sales and assignments between those engaged in the oil industry is the fact that Corporation and Joiner themselves and through their Agent, Johnson, used high pressure and fraudulent methods in inducing persons to make purchases from them. The coverage of the Act is limited to the sale, etc. of "securities" as defined in section 2 (1),[1] and we do not think these sales and assignments are sales of securities as defined by such Section, nor do we think that the high-pressure and fraudulent methods used serve to bring them within such definition. As suggested by the District Judge, there are available to the Government in proper cases the mail fraud statutes to stop such practices. To hold that such sales and assignments, which, as stated, are interests in land, are sales of securities would be stretching and straining the coverage of the Act far beyond what Congress intended.

There is much to be said in favor of the view that since Section 2 (1) *includes* the sale or assignment of "fractional *undivided interest* in oil, gas or other mineral rights," there are *excluded* sales or assignments of mineral rights in—not undivided interests—but specific tracts. We think, however, the true test is the title or rights of the purchaser after his purchase, i. e., what title, right, or interest the purchaser had after all had been said and done with respect to his purchase. That was the test in Atherton *v.* United States (128 Fed. (2d) 463), and in many other cases upon which Appellant relies. The representations made by Corporation, et al. before or after the sale, whether true or false, are only pertinent insofar as they throw light on the rights of the purchaser after the sale. The record here shows that purchasers from Corporation of the lease-hold interest in the 2½-acre to 20-acre tracts took under the Laws of Texas an interest in land in the specific tract or tracts purchased by them, but no more. They took no interest in tracts of other purchasers, nor in

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[1] Section 2 (1) of the Act is as follows:

"Sec. 2. When used in this title, unless the context otherwise requires—

"(1) The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

unsold tracts of Corporation, nor in Corporation's well, nor any pr
duction therefrom. They took what every purchaser of an inter
in land takes, i. e., the chance that by the happening of so
event—in this case the promised production of oil or gas in Corpor
tion's well—the value of their tract might be increased, but that is t
only benefit they would have received from the production from Co
poration's well. And Appellant's case is not helped by the fact th
while each purchaser could have developed his tract, he probably d
not intend to do so, but depended on Corporation to develop its hol
ing, since, as stated, purchasers were to take no part of the proce
of Corporation's development. Even if, as Appellant apparent
claims, the representation made by Corporation and Joiner that t
well would be drilled and other similar representations were expr
or implied obligations by Corporation, such obligations did not ser
to give purchasers a greater right or interest in their tracts than
stated. In some of the literature mailed by Corporation and Join
statements are made that the purchaser of a lease on a certain siz
tract in McCulloch County would get "ten acres free" in the ne
block of acreage drilled by Corporation, but the record does not sho
that the purchaser's rights in the "free" ten acres were to be or we
different from the rights of purchasers in the McCulloch Coun
tracts.

This view is not out of harmony with the cases which Appella
cites and presses upon us, except perhaps the Natural Resources Co
poration case (8 S. E. C. 635, 1941).* In Atherton v. United State
supra, which was a prosecution against Atherton and others, chargi
violation of Section 17 (a) (1) of the Act, the question arose
whether the contracts, etc. between Atherton, et al. and purchase
from them were securities within the meaning of Section 2 (1). The
leases on 2,300 acres of land were sold in tracts of not less than 2
acres near or surrounding 160 acres on which a well was to be drilled
the drilling site. It is there said (italics ours);

"It is made clear in the indictment and in the proof that the pu
chasers looked entirely to the efforts of the promoters to make the
investment a profitable one. The small leased acreage acquired
the individual purchaser was not itself susceptible of economic d
velopment, nor was the purchase made with the idea of independe
exploitation. The leases were sold at prices ranging from $50 to $2
per acre upon the promise and representation that the proceeds of t
sale would be used for bringing a well into production on the drill si
thus proving the productivity of the whole area under lease. It w
proposed that when the well was completed the entire acreage, i
cluding the area selected as the drilling site, would be sold as one un
and that each purchaser of an assignment would receive a pr
portionate share of the purchase price. *Clearly the investor acquir
more than a mere lease.*"

* We cannot see our way clear to follow all the way the decision of the Commission in t
Natural Resources Corporation case, passing upon facts very similar to the facts here.

The other cases upon which Appellant stands* do not differ greatly, if at all, from the Atherton case. In all the cases, the Courts have brushed aside any camouflage, gone to the heart of the transactions, found the facts, and applied the definition (Section 2 (1)). We have done so here, and find simply sales and assignments of legal and legitimate Oil and Gas Leases, i. e., sales of interests in land. We believe that Congress intended to draw the line somewhere, and that it intended to exclude from the coverage of the Act such sales and assignments, leaving the right and privilege of making same unaffected by the Act, but, of course, leaving the Government free to proceed under the mail fraud or other appropriate statute against those who may, in the exercise of such right, defraud or seek to defraud the public.

We think the Judgment appealed from should be and it is affirmed.

HUTCHESON, Circuit Judge, Dissenting:

I regard the majority opinion as a thorough and well reasoned exposition of the view it espouses, and would agree with it if I could accept the assumption upon which it is based that the purchasers got nothing by their purchases except "an interest in land in the specific tract or tracts purchased by them but no more." I cannot, however, accept this premise, for the record does not support the view of the opinion that no engagements whatever were made as to drilling a well or conducting an enterprise of any sort. It is true that no such express engagements were made, but it is equally true, especially in cases of fraud doing, that implied agreements bind as firmly as express ones. A careful reading of the record convinces me that here was no mere sale of leases. Here was also the sale of an interest in an enterprise, the drilling of exploratory wells on a block of leases by which drilling alone value was imparted to them. This is made plain both by the oral testimony and the exhibits. The exhibits are the conventional development letters spread with molasses to catch flies, the molasses being the understanding, implied in most of the cases and expressed in some of them, that an exploratory well would be drilled. For instance, in plaintiffs' Exhibit 17, Joiner advises that wells are in process of drilling and should be completed during August, and agrees "These developments should be of short duration. Therefore, we are here offering you leases around these two wells * * *. You may have 10 acres around one or both wells at $5.00 per acre cash payable by August 1, 1941, and $5.00 per acre additional, payable Nov. 1, 1941, or 30 days after both wells are completed. * * * This offer is limited and your offer must be in the mail by August 1, 1941. If it is in the mail when and if we strike the pay, your order will be filled, and we feel sure that you would have no opportunity

* Atherton v. United States, 128 Fed. (2d) 463. Securities & Exchange Commission v. Crude Oil Corporation of America, 93 Fed. (2d) 844. Securities & Exchange Commission v. Wickham, 12 Fed. Supp. 245. Securities & Exchange Commission v. Universal Service Assn., 106 Fed. (2d) 232. Securities & Exchange Commission v. Tung Corporation of America, 32 Fed. Supp. 371. Securities & Exchange Commission v. Pyne, 33 Fed. Supp. 988. Securities & Exchange Commission v. Payne, 35 Fed. Supp. 872. Securities & Exchange Commission v. Bailey, 41 Fed. Supp. 647.

later *to invest in leases around either of these two wells. This offe goes to you now who have at some time invested in a lease or lease around some well that the C. M. Joiner interests have drilled.*" [Italics supplied.]

At the end of one of his letters he says:

"We know of no investment of greater promise than an investmen in an oil lease around a drilling well in the State of Texas.

CLIMAX

In a continuation of our efforts to make you money, if you send in a order for twenty acres around either or both of these wells, after th date of this letter, you will get ten acres FREE in the next block o acreage we drill which is most likely to be in Concho County, Texas You will really be in the oil business."

Johnson was enjoined as a dealer in investment contracts and prop erly so. Joiner ought to be enjoined for his own activities and fo those of Johnson too. I think it plain under this evidence that Joine was not merely selling oil leases, that is, interests in land; he wa selling investment contracts, that is, leases coupled with an implied if not in some cases an express, obligation to give value to the leas by drilling exploratory wells. While then I agree with the majority that a mere sale of interests in land or leases without more does no make one a dealer in investment contracts, I think the judgmen ought to be reversed because the proof here showed much more What really occurred was a sale of a lease coupled with an implie contract to drill an exploratory well. I have little doubt that eac of the purchasers acquired not only title to the lease he bought bu a contract right against Joiner in respect of the oil development held out, and, therefore, that Joiner was dealing not merely in leases bu in investment contracts. I respectfully dissent.

Judgment

Extract from the minutes of February 1, 1943

No. 10440

SECURITIES AND EXCHANGE COMMISSION

v.

C. M. JOINER LEASING CORPORATION, ET AL.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District o Texas, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

HUTCHESON, Circuit Judge, dissents.

Clerk's certificate

United States of America

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 195 to 209 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 10440, wherein Securities and Exchange Commission is appellant, and C. M. Joiner Leasing Corporation, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1a to 194a are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of February A. D. 1943.

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1943

FILE COPY

No. [redacted] 24

In the Supreme Court of the United States

October Term, 1943

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

C. M. JOINER LEASING CORPORATION AND
C. M. JOINER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. —

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

C. M. JOINER LEASING CORPORATION AND
C. M. JOINER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the Securities and Exchange Commission, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered February 1, 1943, which affirmed the judgment entered on May 21, 1942, by the United States District Court for the Northern District of Texas, Dallas Division.

OPINIONS BELOW

The opinions of the Circuit Court of Appeals (R. 195–202) are not yet reported. The oral opinion of the District Court (R. 116a–118a) is unreported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 1, 1943 (R. 202). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, which is made applicable by Section 22 (a) of the Securities Act of 1933 (15 U. S. C. § 77v (a)).

QUESTION PRESENTED

The sole question presented is whether, under the undisputed findings of fact, certain sales of oil and gas leases involved sales of a "security" as defined in Section 2 (1) of the Securities Act of 1933.

STATUTE INVOLVED

Section 2 (1) of the Securities Act of 1933, as amended (15 U. S. C. § 77b (1)), provides as follows:

> The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any cer-

tificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

STATEMENT

This action was instituted by the Commission to enjoin C. M. Joiner Leasing Corporation and C. M. Joiner individually from selling securities through the mails or in interstate commerce in violation of the registration and prospectus requirements of Section 5 (a) of the Securities Act of 1933 (15 U. S. C. § 77e)[1] and the anti-fraud provisions of Section 17 (a) (15 U. S. C. § 77q (a))[2] (R. 2a–

[1] "Sec. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

"(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

"(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale."

[2] "Sec. 17. (a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

9a). The transactions which were alleged to involve the sale of securities occurred in connection with assignments of oil and gas leases. The facts, which are not in dispute, may be summarized as follows:

Respondent, C. M. Joiner Leasing Corporation, acquired by assignment oil and gas leaseholds in a 3,000-acre tract in Texas (R. 75a). This tract was given the name of Joiner Paramount Development. In order to finance the drilling of a well,[1] respondent, C. M. Joiner, embarked upon a sales campaign, offering to sell to the public, in widely scattered areas throughout the country, instruments purporting to be assignments of leaseholds in specific portions of the tract (R. 76a). These portions covered as little as 2½ or 5 acres and never more than 20 acres, and the price varied from $5 to $15 an acre (R. 73a, 96a, 176a–177a). The offering was begun without a disclosure of the location of the Joiner Paramount Development, and the purchasers generally had no choice as to the location of the land covered by their leases. They were invited to purchase leases on undescribed, unlocated acreage which was selected in each case by the promoters. (R. 127a.) The selling literature was clearly aimed at creating the impression that investors would earn a profit through the efforts of Joiner in drilling a well on the tract and bringing in oil (R. 121a–181a).

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[1] The contractor drilled down 1,375 feet without striking oil and then abandoned his efforts (R. 30a).

The District Court, while finding that respondents' literature was fraudulent and misleading (R. 116a), denied the injunction on the ground that the transactions involved did not constitute sales of a security within the meaning of Section 2 (1) of the Securities Act. The court below, Hutcheson, J., dissenting, affirmed.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *Atherton* v. *United States*, 128 F. (2d) 463.

In the *Atherton* case, the court held that assignments of oil and gas leases in minimum lots of 2½ acres each to finance the drilling of a well on a 160-acre tract under lease in Oklahoma involved sales of a "security" in the nature of an "investment contract" within the meaning of Section 2 (1) of the Securities Act of 1933. Affirming convictions based on the fraudulent sale of such assignments in violation of Section 17 (a) of the Securities Act, the court stated (at p. 465):

> It is made clear in the indictment and in the proof that the purchasers looked entirely to the efforts of the promoters to make their investment a profitable one. The small leased acreage acquired by the individual purchaser was not itself susceptible of economic development, nor was the purchase made with the idea of independent exploita-

tion. The leases were sold at prices ranging from $50 to $200 per acre upon the promise and representation that the proceeds of the sale would be used for bringing a well into production on the drill site, thus proving the productivity of the whole area under lease. It was proposed that when the well was completed the entire acreage, including the area selected as the drilling site, would be sold as one unit, and that each purchaser of an assignment would receive a proportionate share of the purchase price. Clearly, the investor acquired more than a mere lease.

In the instant case, as in the *Atherton* case, the facts establish that the lots were not assigned for development or use by the purchasers. The size of the acreage and the distance of the purchasers from the land involved wholly negate such a conclusion. Rather, it was clearly contemplated that the purchasers were acquiring an interest the value of which was to be developed by respondents. In these controlling respects, the instant case is identical with the *Atherton* case.[1]

[1] The court quoted the paragraph of the *Atherton* case set out above in the text and italicized the last sentence in support of its statement that its decision was not "out of harmony with" the *Atherton* case. That sentence, however, was the conclusion of law reached by the Ninth Circuit on the basis of the facts which were substantially repeated in the present case. It was not itself a statement of fact which might have distinguished the two cases.

It is true that in the *Atherton* case the understanding as to the reliance of the purchasers on the promoters to earn them a profit by drilling a well and bringing in oil was

It is to be noted that, as a result of the conflict between the instant case and the *Atherton* case, two opposing rules of law obtain in Texas and California, the two largest oil-producing states, which account for the greatest number of oil and gas promotions.

2. The question presented is one of importance in the administration of the Securities Act of 1933, particularly since it involves oil promotion, a field notoriously fertile in schemes by which the unscrupulous have dealt with other people's money.

It has been the Commission's experience that the field of promotion is marked by an indefinite variety of devices invented in an attempt to make the sale of securities appear to be the sale of property. The regulation of the bond and share field has led purveyors of fraudulent financial promotions to transfer their activities to other schemes believed more likely to be immune from effective enforcement of the Act. The decision below would afford a ready method of evading the Act by permitting oil and gas promoters to cut their schemes to fit the purely formal requirements which the court below held sufficient to avoid the Act.

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somewhat more express. The court below, however, did not attempt to base a distinction on this point, and, indeed, the difference is insubstantial.

United States ex rel. Securities and Exchange Commission v. *Shoemaker* (Cr. No. 2343, E. D. Okla., Nov. 9, 1942) is in accord with the *Atherton* decision. See particularly the third conclusion of law. This is an unreported criminal contempt case. Copies of the court's findings and conclusions are being filed with the Clerk.

In Section 2 (1) of the Securities Act, Congress has provided a broad and flexible definition designed to extend the registration and anti-fraud provisions of the Act to the variegated schemes conceived by those who would circumvent the law. The courts have accordingly looked through technicalities and have defined the phrase "investment contract" in Section 2 (1) to include any transaction where the investor looks solely to the efforts of the promoter for the success of his investment. By emphasizing substance rather than form, the courts have effectuated the congressional intention in defining this type of security. Thus, there is a substantial body of cases, both federal and state, in which the purported "sale" or "lease" of some species of real or personal property has been held to involve a sale of a security in the nature of an investment contract. These cases have covered securities disguised as sales of muskrats, rabbits, silver foxes, oyster-bottom acreage, interests in tracts for the development of tung trees, shares in fishing boats, whiskey-bottling contracts, and bills of sale and delivery contracts for crude oil, in addition to the assignments of oil and gas

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Securities and Exchange Commission v. *Crude Oil Corporation of America*, 93 F. (2d) 844 (C. C. A. 7); *Securities and Exchange Commission* v. *Universal Service Association*, 106 F. (2d) 232 (C. C. A. 7), certiorari denied, 308 U. S. 622; *Securities and Exchange Commission* v. *Cultivated Oyster Farms Corp.*, CCH Fed. Securities Law Service, New Matters Vol., par. 90,121 (S. D. Fla.; No. 350, March 22,

leases." And, similarly, in the cases coming before it for administrative adjudication, the Commission has taken the same view. See *Natural Resources Corporation*, 8 S. E. C. 635, which involved facts identical with those here presented.

The court below, however, has emphasized the form of these transactions at the expense of their substance. As Judge Hutcheson's dissenting opinion recognizes (R. 201–202), whatever the appearance of these transactions as a simple assignment of an oil lease, in fact the purchasers (scattered as they are throughout the country and having neither the intention nor the ability to develop their leasehold rights) did not buy leasehold interests in specific pieces of real property, but made a speculative investment in oil leases from which they expected to secure a profit entirely through the activities of the promoters in bringing in a successful well and thus increasing the value of all of the surrounding acreage. These circumstances

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1939, unreported); *Securities and Exchange Commission* v. *Tung Corporation of America*, 32 F. Supp. 371 (N. D. Ill.); *Securities and Exchange Commission* v. *Pyne*, 33 F. Supp. 988 (D. Mass.); *Securities and Exchange Commission* v. *Pyne*, 35 F. Supp. 873 (S. D. N. Y.); *Securities and Exchange Commission* v. *Bailey*, 41 F. Supp. 647 (S. D. Fla.); *Securities and Exchange Commission* v. *Bourbon Sales Corp.*, 47 F. Supp. 70 (W. D. Ky.); *Kerst* v. *Nelson*, 171 Minn. 191, 213 N. W. 904; *State* v. *Robbins*, 185 Minn. 202, 240 N. W. 436; *Stevens* v. *Liberty Packing Corp.*, 111 N. J. Eq. 61, 161 Atl. 193; *Commonwealth* v. *Satold*, 38 Dauphin County Rep. (Pa.) 233.

See *supra*, pp. 6–7n.

would lead to the conclusion that an "investment contract" was here involved.[1]

CONCLUSION

Because of the conflict ~~between~~ with the Circuit Court of Appeals for the Ninth Circuit and the importance of the question presented, the petition for a writ of certiorari should be granted.

Respectfully submitted.

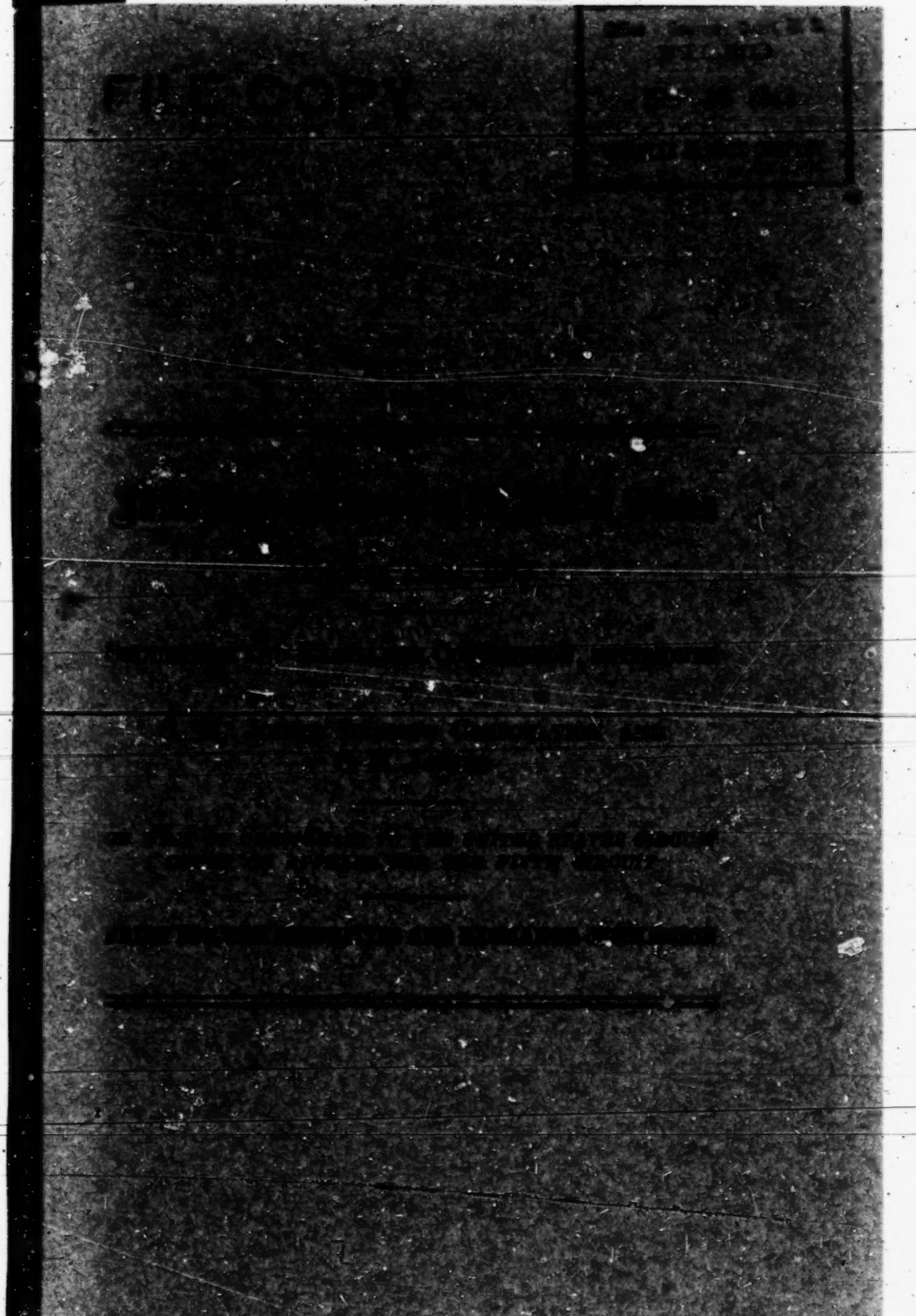
CHARLES FAHY,
Solicitor General.

JOHN F. DAVIS,
Solicitor,
Securities and Exchange Commission.

MARCH, 1943.

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[1] *Securities and Exchange Commission* v. *Universal Service Association*, 106 F. (2d) 232, 237 (C. C. A. 7), certiorari denied, 308 U. S. 622; *State* v. *Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937, 938; *Lewis* v. *Creasey Corp.*, 198 Ky. 409, 248 S. W. 1046, 1048.



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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 24

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

C. M. JOINER LEASING CORPORATION AND C. M. JOINER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The opinions of the circuit court of appeals (R. 195–202) are reported in 133 F. (2d) 241. The oral opinion of the district court (R. 116a–118a) is unreported.

JURISDICTION

The judgment of the circuit court of appeals was entered February 1, 1943. (R. 202). The petition for a writ of certiorari was filed March 11, 1943, and was granted April 19, 1943. The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, which is made applicable by Section 22 (a) of the Securities Act of 1933 (15 U. S. C., § 77v (a)).

QUESTION PRESENTED

The question presented is whether, under the undisputed findings of fact, the sale of certain oil and gas leases involved the sale of a "security" within the meaning of Section 2 (1) of the Securities Act of 1933.

STATUTE INVOLVED

Section 2 (1) of the Securities Act of 1933 (15 U. S. C., § 77b (1)) provides as follows:

> The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

STATEMENT

This action was instituted by the Commission in the District Court for the Northern District of Texas to enjoin [1] C. M. Joiner Leasing Corporation and C. M. Joiner individually from selling unregistered securities in violation of Section 5 (a) of the Securities Act of 1933 [2] and from violating the anti-fraud provisions of Section 17 (a) (2) and (3) [3] (R. 2a–9a). The facts, which are not in dispute, are as follows:

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[1] The Commission is authorized to bring injunctive actions by Section 20 (b) of the Act (15 U. S. C., § 77t (b)).

[2] Section 5 (a) (15 U. S. C., § 77e (a)) provides as follows:

"Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

"(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

"(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale."

[3] Section 17 (a) (15 U. S. C., § 77q (a)) provides in part as follows:

"It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

* * * * *

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

The respondent C. M. Joiner Leasing Corporation, a privately owned company of which the respondent C. M. Joiner is president and directing head (R. 74a), acquired by assignment oil and gas leaseholds in a 3,000-acre tract in McCulloch County, Texas (R. 25a, 75a). This tract was given the name Joiner Paramount Development (R. 40a–44a, 123a), and Joiner made arrangements with a contractor to drill a well (R. 25a–28a, 75a–76a).[1] Thereupon, representing that a well was being drilled (R. 82a, 167a, 170a), Joiner embarked upon a sales campaign in which he offered to sell to the public instruments purporting to be assignments of leaseholds in specific portions of the tract (R. 56a, 62a, 145a–147a, 163a–165a).[2]

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[1] The contractor ultimately drilled 1,375 feet without striking oil and then abandoned his efforts (R. 30a).

[2] The offering was made initially through the medium of one John T. Johnson, who was named as a codefendant in this action. A consent decree was entered on March 16, 1942, permanently enjoining him from violating Sections 5 (a) and 17 (a) (2) and (3) of the Securities Act. (R. 19a–22a).

[3] The form of assignment was as follows (R. 62a, 165a):

"KNOW ALL MEN BY THESE PRESENTS, That, I JNO. T. JOHNSON, operating as Miller Leasing Co. for and in consideration of the sum of One ($1.00) Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, have this day assigned, transferred, conveyed and sold unto MISS SUSIE A. CONWAY, all of my right, title and interest in and to the foregoing oil and gas lease as described and set out in the assignment on the reverse side

The selling literature indicated that investors would earn a profit through the efforts of Joiner in drilling a well on the tract and bringing in oil (R. 33a, 40a–44a, 56a, 82a, 124a–127a, 141a, 168a, 175a). The proceeds were to be used, in part at least, to finance the drilling of the well (R. 76a). Offers were made to 1,500 or 1,800 people in widely scattered areas throughout the country, and actual purchases were made by individuals located in at least 18 states and the District of Columbia (R. 45a, 84a, 176a–179a). The portions of the tract on which leaseholds were assigned covered as little as 2½ or 5 acres and never more than 20 acres, and the price ranged from $5 to $15 an acre (R. 63a, 73a, 83a–84a, 96a, 176a–177a).

The offering was begun without a disclosure of the location of the Joiner Paramount Development, and even after its location was made public the purchasers had no choice concerning the location of their individual leases. They were invited to purchase leases on undescribed and unlocated acreage which was selected in each case by the promoters (R. 40a–44a, 63a, 85a, 97a, 127a).

The district court, while finding that the selling literature was fraudulent and misleading (R. 116a–118a), denied an injunction on the ground

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of this sheet, and the assignee herein hereby accepts same and assumes the payment of the rentals as stipulated therein.

"Dated at DALLAS, TEXAS, this 22nd day of APRIL, A. D. 1941."

that the transactions involved did not constitute sales of a "security" within the meaning of Section 2 (1) of the Securities Act. The court below, while holding that the evidence would justify even "stronger findings of fraud" (R. 198–199, 133 F. (2d) at 244), affirmed the judgment. Judge Hutcheson dissented.

SPECIFICATIONS OF ERROR

The court below erred in:

1. Holding that the sale of oil and gas leases here involved did not constitute the sale of a "security" in the nature of an "investment contract" within the meaning of Section 2 (1) of the Securities Act of 1933;

2. Affirming the judgment of the district court.

SUMMARY OF ARGUMENT

The Securities Act defines a "security" to include any "investment contract." The latter term has been uniformly construed by the courts, both federal and state, to contemplate any scheme whereby money is invested in a common enterprise with the expectation of earning a profit through the efforts of some person other than the investor. Under this approach the courts have found an "investment contract" in the case of a large number of schemes for the purported "sale" or "lease" of some form of real or personal property under an arrangement whereby the seller retains possession and control of the subject of the

"sale" or "lease" with a view to earning a profit for the nominal owners or lessees.

Measured by these tests, the transactions here in question clearly involve the sale of a "security." The nominal leaseholders have not merely purchased leasehold interests in specific pieces of real property. Rather, they have made a speculative investment in a common enterprise from which they hope to secure a profit entirely through the efforts of respondent Joiner in bringing in a successful well and thus increasing the value of all of the surrounding acreage. The mere fact that real property was involved does not take the transaction out of the category of a "security" transaction.

ARGUMENT

RESPONDENTS' SALES OF OIL AND GAS LEASES CONSTITUTE SALES OF SECURITIES WITHIN THE MEANING OF SECTION 2 (1) OF THE ACT

The issue in this case is narrow: whether as a matter of law the respondents have sold merely interests in land or whether they have sold interests in a business enterprise to persons who were led to expect that they would profit through efforts of the seller. If the latter, respondents have sold securities within the meaning of the Act.

The Securities Act is designed to protect the investing public against those who deal with other people's money. This purpose is accomplished by the requirement that the seller honestly disclose

the material facts bearing on the value of securities offered through the mails or in interstate commerce. Dissemination of information is achieved through a "registration statement" filed with the Commission, and a "prospectus" summarizing the information contained in the registration statement. Section 5 (a) of the Act (15 U. S. C., § 77e (a)) forbids the sale of unregistered securities, while Section 17 (a) (15 U. S. C., § 77q (a)) prohibits fraudulent sales of securities.

In Section 2 (1) of the Act (*supra*, p. 2), Congress, following the pattern set by many state "blue sky" laws, did not restrict its definition of the term "security" to such orthodox forms as stocks, bonds, debentures, or notes. Rather it brought within the definition any "investment contract," a term which appears in thirty of the state acts[7] and which has been recognized by the

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[7] See H. Rep. No. 85, 73d Cong., 1st sess. (1933), p. 11.

[8] 8 Ala. Code (1940) tit. 53, § 1; 1 Ark. Dig. Stat. (Pope, 1937) § 861; 1 Cal. Gen. Laws (Deering, 1937) Act 3814, § 2; 4 Colo. Stat. Ann. (Michie, 1935) c. 148, §§ 2 and 19; Conn. Gen. Stat. (Supp. 1935) §§ 4532c and 1548c; Fla. Stat. (1941) § 517.02; 2 Ill. Stat. Ann. (Jones, 1934) § 13.02; 6 Ind. Stat. Ann. (Burns, Supp. 1943) § 25-831; Iowa Code (1939) § 8581.03; Kan. Gen. Stat. Ann. (Corrick, 1935) § 17-1223; Ky. Rev. Stat. (Baldwin, 1942) § 292.010; 1 La. Gen. Stat. (Dart, Supp. 1942) § 1179.1; 3 Mass. Ann. Laws (Lawyers Co-op., Supp. 1942) c. 110A, § 2; 14 Mich. Stat. Ann. (Henderson, 1935) § 19.742; 1 Minn. Stat. (1941) § 80.01; Miss. Code (Supp. 1938) § 792; 2 Mo. Rev. Stat. (1939) § 8258; 2 Mont. Rev. Codes Ann. (Anderson & McFarland, 1935) § 4027; N. H. Pub. Laws (1926) c. 284, § 2, as am'd, L. 1937, c. 165; N. C. Code (Michie, 1939) § 3924 (b); 6 Ohio Gen.

courts as affording the investing public a full measure of protection, whether the transaction takes one of the more orthodox forms of a security or whether instead the promoter clothes the transaction with the appearance of a sale of some species of real or personal property.

In drawing the line between investment contracts and actual transactions in tangible property, the courts, while hesitant to adopt rigid definitions which would furnish a blueprint for fraud,[9] have looked through form to substance to determine whether in the circumstances of each particular case a "security" is involved. *S. E. C.* v. *Crude Oil Corporation of America*, 93 F. (2d) 844, 846 (C. C. A. 7); *S. E. C.* v. *Universal Service Association*, 106 F. (2d) 232, 237 (C. C. A. 7), certiorari denied, 308 U. S. 622.[10] From these cases

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Code Ann. (Page, Supp. 1942) § 8624-2; Okla. Stat. Ann. (1938) tit. 71, § 1; 5 Ore. Comp. Laws Ann. (Bankroft-Whitney, Supp. 1942) § 80-102; Pa. Stat. Ann. (Purdon, Supp. 1942) tit. 70, § 32; 4 S. C. Civ. Code (1942) § 8114; 3 S. D. Code (1939) § 55.1902; 2 Tex. Rev. Civ. Stat. Ann. (Vernon, 1925) art. 600a, § 2 (a); Utah Rev. Stat. Ann. (1933) § 82-1-4; W. Va. Code Ann. (1937) § 3273 (2); Wis. Stat. (1941) § 189.02. These statutes are collected in 132 CCH Stocks and Bonds Law Service.

[9] See *State* v. *Whitaker*, 118 Ore. 656, 661, 247 Pac. 1077, 1079.

[10] See also *S. E. C.* v. *Wickham*, 12 F. Supp. 245, 247 (D. Minn.); *S. E. C.* v. *Tung Corporation of America*, 32 F. Supp. 371, 374 (N. D. Ill.); *S. E. C.* v. *Payne*, 35 F. Supp. 873, 877 (S. D. N. Y.); *S. E. C.* v. *Bailey*, 41 F. Supp. 647, 650 (S. D. Fla.); *United States* v. *Monjar*, 47 F. Supp. 421, 426 (D. Del.), appeal pending; *People* v. *White*, 124 Cal. App. 548, 555, 12 P. (2d) 1078, 1081; *Prohaska* v. *Hemmer-Miller*

may be derived the general tests and the identification of essential elements of an investment contract.

In *State* v. *Gopher Tire & Rubber Co.*, 146 Minn. 52, 56, 177 N. W. 937, 938, decided in 1920, the term "investment contract" was defined by the Supreme Court of Minnesota as a contract providing for "The placing of capital or laying out of money in a way intended to secure income or profit from its employment." Substantially this definition—"the investment of money with the expectation of profit through the efforts of other persons"—has now become crystallized in the cases.[11] The same concept has been ex-

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Development Co., 256 Ill. App. 331; *Kerst* v. *Nelson*, 171 Minn. 191, 195, 213 N. W. 904, 905; *Klatt* v. *Guaranteed Bond Co.*, 213 Wis. 12, 21, 250 N. W. 825, 829.

[11] The Circuit Court of Appeals for the Seventh Circuit has said of this general phrase: "Such definition has support in state decisions and describes a relationship which is in substance that of a security investor." *S. E. C.* v. *Universal Service Association*, 106 F. (2d) 232, 237, certiorari denied, 308 U. S. 622. See also *Atherton* v. *United States*, 128 F. (2d) 463, 465 (C. C. A. 9); *S. E. C.* v. *Wickham*, 12 F. Supp. 245, 248 (D. Minn.); *S. E. C.* v. *Timetrust, Inc.*, 28 F. Supp. 34, 39 (N. D. Cal.); *S. E. C.* v. *Pyne*, 33 F. Supp. 988 (D. Mass.); *S. E. C.* v. *Payne*, 35 F. Supp. 873, 878 (S. D. N. Y.); *S. E. C.* v. *Bailey*, 41 F. Supp. 647, 650 (S. D. Fla.); *S. E. C.* v. *Bourbon Sales Corp.*, 47 F. Supp. 70, 72–73 (W. D. Ky.); *Domestic & Foreign Petroleum Co.* v. *Long*, 4 Cal. (2d) 547, 555–556, 51 P. (2d) 73, 76; *Prohaska* v. *Hemmer-Miller Development Co.*, 256 Ill. App. 331; *Lewis* v. *Creasey Corp.*, 198 Ky. 409, 413–414, 248 S. W. 1046, 1048; *State* v. *Heath*, 199 N. C. 135, 139, 153 S. E. 855, 857; Note, 36 Col. L. Rev. 683.

pressed somewhat differently: An investment contract is held to be involved in "all schemes for investment, regardless of the forms of procedure employed, which are designed to lead investors into enterprises where the earnings and profits of business or speculative ventures must come through the management, control, and operations of others and which, regardless of form, have the characteristics of operations by corporations, trusts or similar business structures." *Moore* v. *Stella,* 52 Cal. App. (2d) 766, 778, 127 P. (2d) 300, 306.[12]

[12] In that case, whose facts are strikingly similar to those in the case at bar, the court stated (52 Cal. App. (2d) at 783, 127 P. (2d) at 308):

"By devious means defendants sought to accomplish the same purposes that would have been accomplished in a lawful and legitimate manner by the authorized sale of stock of a corporation holding title to the mineral rights and engaged in developing them with the proceeds of stock sold to investors and for the benefit of stockholders. * * *"

Similarly, in *S. E. C.* v. *Bailey,* 41 F. Supp. 647, 650 (S. D. Fla.), in which the investment contract took the form of a purported sale of land with a concurrent contract for the planting and development of tung trees by the vendor, the court stated:

"Instead of a stock certificate evidencing a share in a common ownership of capital assets, these purchasers receive a deed evidencing an ownership in severalty."

See also *Kerst* v. *Nelson,* 171 Minn. 191, 194, 213 N. W. 904, 905 (purported sale of land under a contract providing for its cultivation as a vineyard by a third party); *S. E. C.* v. *Payne,* 35 F. Supp. 873, 879 (S. D. N. Y.) (purported sale of live silver foxes under a contract providing for their breeding and sale by a third party).

In short, whenever an interest in what is in substance a business enterprise is offered to persons who are led to expect that they will earn a profit through the efforts of the seller or some person other than themselves, it is immaterial whether their shares in the enterprise take the form of stock or bond ownership, or of nominal interests in the physical assets employed in the enterprise. When those conditions are present, the substance controls the form, and a sale of a "security" in the nature of an "investment contract" occurs. Under this approach, a large variety of schemes purporting to involve a "sale" or "lease" of some form of tangible property, and comprehending an arrangement by which the seller retains possession and control of the subject of the "sale" or "lease" with a view to earning a profit for the nominal owners or lessees, has been held to involve a sale of a security.[13]

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[13] Under the Securities Act of 1933 the term "investment contract" has been held to cover purported sales of:

Instruments denominated "bill of sale and delivery contract for — barrels of crude oil": *S. E. C.* v. *Crude Oil Corporation of America*, 93 F. (2d) 844 (C. C. A. 7).

Land for the development of tung trees: *S. E. C.* v. *Tung Corporation of America*, 32 F. Supp. 371 (N. D. Ill.); *S. E. C.* v. *Bailey*, 41 F. Supp. 647 (S. D. Fla.).

Silver foxes: *S. E. C.* v. *Payne*, 35 F. Supp. 873 (S. D. N. Y.). (A registration statement has been filed under the Securities Act covering investment contracts for the sale of live chinchillas.)

Conditional bills of sale for oyster half-shells to be planted on oyster bottom acreage: *S. E. C.* v. *Cultivated Oyster Farms Corp.*, unreported, 1 S. E. C. Jud. Dec. 672, CCH

Conversely, no sale of an "investment contract" occurs when neither the element of a common enterprise nor the element of reliance on the efforts of another is present. Thus, no "investment contract" is involved where a person invests in real estate, with the hope perhaps of earning a profit as the result of a general increase in values concurrent with the development of the

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Fed. Sec. Law Serv., par. 90,121 (S. D. Fla., No. 350, March 22, 1939).

Undivided interests in specified fishing boats: *S. E. C.* v. *Pyne*, 33 F. Supp. 988 (D. Mass.).

Cf. *S. E. C.* v. *Bourbon Sales Corp.*, 47 F. Supp. 70 (W. D. Ky.) (whiskey bottling contracts sold to holders of whiskey warehouse receipts and alleged by the respondent to involve merely the purchase of whiskey).

Under state blue sky laws the term "investment contract" has similarly been held to include purported sales of:

Muskrats: *State* v. *Robbins*, 185 Minn. 202, 240 N. W. 456.

Rabbits: *Stevens* v. *Liberty Packing Corp.*, 111 N. J. Eq. 61, 161 Atl. 193; cf. *Commonwealth* v. *Sofield*, 38 Dauphin County Rep. (Pa.) 233 ("certificate in or under a profit-sharing or participation agreement").

Land to be cultivated as a vineyard by a third party: *Kerst* v. *Nelson*, 171 Minn. 191, 213 N. W. 904.

Land to be developed by the vendee as a fig orchard: *State* v. *Agey*, 171 N. C. 831, 88 S. E. 726. (The North Carolina Blue Sky Law did not include the term "investment contract," but the defendant was held to be an "investment company" within the meaning of the statute.)

Farm land to be paid for with the proceeds of crops planted by the vendor: *Prohaska* v. *Hemmer-Miller Development Co.*, 256 Ill. App. 331.

Option contracts for the sale of land: *State* v. *Evans*, 154 Minn. 95, 191 N. W. 425; *Verellini* v. *U. S. L. Realty Co.*, 158 Minn. 72, 196 N. W. 672; *Webster* v. *U. S. L. Realty Co.*, 170 Minn. 360, 212 N. W. 806.

neighborhood, so long as he does not do so as part of an enterprise whereby it is understood expressly or impliedly that the property will be developed or operated by others. See *In re McCormick's Estate*, 284 Ill. App. 543, 1 N. E. (2d) 769. Again, in *People* v. *Steele*, 2 Cal. App. (2d) 370, 36 P. (2d) 40, the court held that an "investment contract" was not involved where the defendant leased placer mining equipment to a person who was to operate it himself under the supervision of a technical director to be furnished by the defendant."[14]

The transactions in this case fall well within the limits of the tests thus enunciated. The circumstances readily establish that the purchasers here have not merely acquired leasehold interests in specific parcels of realty, but rather have made a speculative investment in a common enterprise from which they hoped to secure a profit through the activities of respondent Joiner.

Following a well-recognized pattern in the sale of oil and gas leases to the public, Joiner first found an area in which there was little indication

[14] See also *Lewis* v. *Creasey Corp.*, 198 Ky. 409, 248 S. W. 1046, where the sale by a wholesale grocery company of so-called "service contracts" to retail dealers was held not to involve a "security contract"; and *State* v. *Heath*, 199 N. C. 135, 153 S. E. 855, where a contract under which the purchaser was to receive 80% of the gross receipts of his own servicing of the vendor's copyrighted realty transfer system was held not to be an "investment contract" because "the anticipated profits were dependent chiefly upon the efforts" of the purchaser.

of oil (R. 105a–108a), so that it might be obtained cheaply, but which was sufficiently close to oil country to provide the basis for materials in advertising circulars. Then, after organizing the respondent company, in whose name he obtained a lease on 3,000 acres, and subdividing his lease into small units, Joiner caused to be sent to over 1,500 individuals throughout the United States, from Maine to California and from Wisconsin to Louisiana (R. 45a, 84a, 176a–179a), high-pressure literature promising that he was going to help his "many friends" (R. 40a–44a, 125a) get rich:

> Approximately $500,000,000.00 has been realized by investors in the OIL FIELDS opened by C. M. "Dad" JOINER (R. 40a–44a, 125a.)
>
> REMEMBER—nothing pays off so quickly, or profitable, like owning acreage near a successfully completed wildcat well (R. 40a–44a, 125a).
>
> * * * we know of no investment of greater promise than an investment in an oil lease around a drilling well in the State of Texas (R. 82a, 172a).[15]

Heavily emphasized was the fact that this was an "investment" and that those who purchased

[15] Former investors who had sustained losses in the past in similar ventures were told:

"If you have sustained any losses in your investments in leases this looks like a good chance for you to make a winning." (R. 82a, 168a.)

would be investors in "one of Mr. Joiner's greatest achievements" (R. 56a, 141a). There was no indication in the selling literature that the purchasers of leases would earn any return on their investments otherwise than through the efforts of Joiner.[16]

This factor in the literature of sole dependence upon the efforts of Joiner and his agents was carried into practice. Joiner, not the purchasers,

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[16] Thus, the selling literature stated:

"We sincerely hope that this will reward you handsomely with a nice profit on your investment, because we believe that this well is destined to be one of Mr. Joiner's greatest achievements." (R. 56a, 141a.)

"This is certainly my supreme effort in attempting to reward you and others, by again bringing in another great oil field, and believe this endeavor is most approbately [*sic*] named my PARAMOUNT DEVELOPMENT. * * * You get the benefit of the experience and judgment of C. M. "Dad" Joiner, the greatest 'wildcatter' the world has ever known. * * * You know that Mr. Joiner has your interest at heart and that his greatest ambition is to again duplicate his East Texas Discovery, thereby rewarding his many friends who have kept faith with him." (R. 40a–44a, 125a.)

"We know that we are oil-minded and optimistic but we believe that we are submitting this proposition to you in language that will appeal only to business people who are interested in making an investment where they have a good chance for splendid returns on the investment." (R. 82a, 168a.)

"We feel that you should sent [*sic*] your order in for as much as you can without its distressing you financially, for as a speculative investment we know of none more promising. Remember, if YOU do not make money on your investment it will be impossible for us to make money. * * * Fortunes made in oil go to those who invest. We believe you should invest here, and now!" (R. 82a, 175a.)

selected the drilling contractor and arranged the terms of the drilling contract (R. 25a–28a, 75a–76a). The contractor, not the purchasers, selected the drilling site (R. 27a). The purchasers did not even select their own leasehold locations; these locations were chosen for them by Joiner or his associate, Johnson (R. 40a–44a, 63a, 85a, 97a, 127a). The relationship of the investors, actual and prospective, to the enterprise was confined to the receipt of constant reminders that Joiner's test well was being drilled and that success was just around the corner (R. 59a, 61a, 82a, 159a, 161a, 167a, 170a). As Judge Hutcheson stated in his dissenting opinion below (R. 201), "The exhibits are the conventional development letters spread with molasses to catch flies, the molasses being the understanding, implied in most of the cases and expressed in some of them, that an exploratory well would be drilled."

Other factors here present reenforce the conclusion that the purchasers have not bought realty for their own use, but rather have made an investment in a common enterprise the value of which depended on the efforts of the promoter. Many of the investors live at great distances from the site of the property of which they are the nominal lessees (R. 45a, 84a, 176a–179a). Geographical remoteness, coupled with the comparatively small size of the individual purchase, negates the notion that this is simply a real

estate transaction.[17] Further, the size of the financial stake of the individual purchasers of "leases" in the Joiner Paramount Development is significant. The largest single investment shown by the record was $100 and the great majority amounted to $25 or less (R. 83a–84a, 176a–177a). These figures contrast with the average estimated cost of drilling an oil well in West Central Texas, where McCulloch County is located, which in 1939 was about $10,000, and with a national average of approximately $21,600.[18] This

[17] The courts have emphasized the fact that East Texas crude oil was sold to residents of Wisconsin (*S. E. C.* v. *Crude Oil Corporation of America*, 93 F. (2d) 844, 848 (C. C. A. 7)); that silver foxes in Wisconsin were sold to residents of New York, Washington, Baltimore, and Chicago (*S. E. C.* v. *Payne*, 35 F. Supp. 873, 878 (S. D. N. Y.)); that interests in Florida tung groves were sold mainly to residents of other states (*S. E. C.* v. *Bailey*, 41 F. Supp. 647, 649 (S. D. Fla.)); and that mineral deeds of land in Oklahoma and Texas were sold to residents of California (*People* v. *Jackson*, 24 Cal. App. (2d) 182, 193, 74 P. (2d) 1085, 1091). In the last of these cases the court stated:

"* * * Bearing in mind, however, that all the grantees named in such deeds were residents of San Diego County, whereas the lands were located in Oklahoma and Texas, and observing also the very small fractional interests conveyed, we have no hesitancy in declaring that the quoted language [giving the right of ingress and egress to drill and develop the land] consists of empty words and that it was never anticipated that the grantees would ever avail themselves of the right so generously accorded to them."

[18] Miller and Shea, *Recent Progress in Petroleum Development and Production*, Hearing before Special Subcommittee on Petroleum Investigations of Committee on Interstate and Foreign Commerce on H. Res. 290 and H. R. 7372, 76th Cong., 3d sess. (1939), part 1, p. 319, at p. 350, table 10.

indicates that the investors had no intention of independently developing their holdings. And, finally, Texas imposes spacing regulation under which a special exception would have to be obtained from the Texas Railroad Commission in order to drill a well on a tract as small as 5 acres.[19]

These factors, together with other physical and economic considerations limiting the number of profitable wells in so barren an area as McCulloch County (R. 106a–107a), establish that the small acreage covered by the leases makes individual exploitation impracticable.[20]

Respondent Joiner's test well was to cost $5,000 plus expenses of casing and tubing (R. 29a, 119a).

[19] Rule 37 of the Texas Railroad Commission (as amended February 18, 1943), the general spacing rule in Texas, requires 20-acre spacing, and many of the special rules adopted by that Commission for particular oil fields likewise require 20-acre or even 40-acre spacing. See statement of M. G. Cheney, Hearings, *supra*, note 18, part 4, at 1778; Walker, *The Problem of the Small Tract Under Spacing Regulations* (Aug. 11, 1938) 37 Oil and Gas J. 41, 101 *et seq.* Since the oil title in this case was severed with a view to oil development, it is at least doubtful whether an exception to Rule 37 would be granted. See *Nash* v. *Shell Petroleum Corp.*, 120 S. W. (2d) 522, 524 (Tex. Civ. App.). In any event the investor would have to sustain the burden, at a hearing before the Railroad Commission, of proving the necessity of a separate well to prevent waste or confiscation of property. See *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 69, 131 S. W. (2d) 73, 89. And litigation might well be involved. *Cf.* the discussion of Rule 37 in *Burford* v. *Sun Oil Co.*, Nos. 495–496, last term, decided May 24, 1943. Furthermore, future development will be subject to the federal wartime spacing regulations issued by the Petroleum Administration for War. See Order 11, effective March 31, 1943, 8 Fed. Reg. 3955, which requires 40-acre spacing.

[20] In *Atherton* v. *United States*, 128 F. (2d) 463, 465 (C. C. A. 9), where the minimum lots covered 2½ acres each,

In short, all the circumstances compel the conclusion that the entire scheme involves in substance a speculative investment in a common enterprise in which there was necessarily contemplated complete reliance by the investor upon respondents' efforts. Consequently, under the established tests discussed above, respondents have been selling securities within the meaning of Section 2 (1) of the Act.

This conclusion is not altered, as respondents have contended, by the fact that the underlying property here is land and that the purchasers' interests are estates in realty.[21] Whatever significance this fact may have in the fields of taxation and conveyancing, it is immaterial in respect of the issue whether an investment contract is

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the court concluded that "The small leased acreage acquired by the individual purchaser was not itself susceptible of economic development, nor was the purchase made with the idea of independent exploitation." And in *Moore* v. *Stella*, 52 Cal. App. (2d) 766, 775, 127 P. (2d) 309, 304 the court stated: "Of course each owner of a drill site would have the right to drill a well on it or to lease it separately for the drilling of a well (assuming that he also held the necessary surface rights); *but the scheme of the promotion cannot be given a pattern drawn on this fantastic possibility.*" [Italics supplied.]

[21] Under Texas law, a lessor's interest in a Texas oil and gas lease is a real property estate which can be the subject of a fee simple title. *Downman* v. *Texas*, 231 U. S. 353; *Texas Co.* v. *Daugherty*, 107 Tex. 226, 176 S. W. 717; *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 579. In California and other jurisdictions, oil rights are regarded as in the nature of a license. See Marshall and Meyers, *Legal Planning of Petroleum Production*, 41 Yale L. J. 33, 40–43.

here involved. Plainly, a transaction may involve an investment contract even though the property which is the subject of the transaction is realty, as was true in a number of the investment contract cases cited above. See note 13, *supra*. Indeed, this is explicitly recognized both by the Texas Securities Act, which defines a security, *inter alia*, as "any * * * certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title," [22] and by the Securities Act of 1933, which includes in its definition of a security any "fractional undivided interest in oil, gas, or other mineral rights." [23] An instrument conveying realty interests is not

[22] 2 Tex. Rev. Civ. Stat. Ann. (Vernon, 1925), art. 600a, § 2 (a); see *Kadane* v. *Clark*, 135 Tex. 496, 143 S. W. (2d) 197.

[23] The court below was mistaken in its view (R. 199) that the inclusion in Section 2 (1) of the phrase "fractional undivided interest in oil, gas, or other mineral rights" excludes from the definition of "security" sales or assignments of mineral rights in specific tracts. Originally the Act did not include this phrase at all, but Congress nevertheless was of the view that its definition "is broad enough to include as securities, for example, certificates of interest in oil, gas, or mining leases or royalties." H. Rept. No. 85, 73d Cong., 1st sess. (1933), p. 11. The "fractional undivided interest" phrase was added by amendment in 1934 "to make clear, what is already a matter of interpretation, that * * * fractional oil royalty, or leasehold interests and interests of a similar character are included within the definition of a security and thus subject to the Securities Act." H. Rep. No. 1838, 73d Cong., 2d sess. (1934), p. 39. Plainly, Congress thus intended only to identify specifically one of the more frequent forms of investment contracts, and did not intend to narrow the original definition.

by that fact alone removed from the category of a security. *State* v. *Pullen*, 58 R. I. 294, 192 Atl. 473; *Atwood* v. *State*, 135 Tex. Cr. 543, 121 S. W. (2d) 353.[24]

As a matter of administrative construction the Commission has held that an investment contract was involved under facts identical with those in the present case. *Natural Resources Corporation*, 8 S. E. C. 635. Moreover, the only two courts which have considered cases under the Act involving facts substantially similar to those in the case at bar have reached the same result. *Atherton* v. *United States*, 128 F. (2d) 463

[24] The lower court pointed out the availability of the mail fraud statute to stop the type of fraudulent practice in which the respondents were found to have been engaged (R. 199, 133 F. (2d) at 245). The emphasis in the Securities Act, however, is on prevention rather than punishment. Not only may fraudulent activities be enjoined under Section 17 (a), in contrast to the purely criminal operation of the mail fraud statute, but the registration and prospectus provisions of Section 5 also require a certain minimum disclosure to be made in selling securities, and the present action is to enjoin violations of both sections. The very enactment of the Securities Act, therefore, indicates a Congressional belief that the purely penal provisions of the mail fraud statute were inadequate in the securities field. *Cf. Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 550. Even in substance, moreover, Section 17 (a) does more than simply duplicate the mail fraud statute. Cf. *Edwards* v. *United States*, 312 U. S. 473, 483–484.

(C. C. A. 9);[25] *United States ex rel. S. E. C.* v. *Shoemaker* (E. D. Okla., Cr. No. 23443, Nov. 9, 1942).[26]

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[25] According to the statement of facts in the *Atherton* opinion, the basis of the indictment was that "the defendants conceived and carried into effect a scheme to defraud through the sale of partial assignments of oil and gas leases and undivided interests in a drill site" (128 F. (2d) at 463). The indictment in that case discloses that the defendants sold two distinct types of securities: (1) investment contracts involving leases on specific tracts as in the present case, and (2) fractional undivided 1/1000th interests in the 160-acre drill site. We rely here on the holding that the first of these was a security. It is immaterial, moreover, that in the *Atherton* case there was a specific proposal that the entire acreage would eventually be sold as one unit and that each leaseholder would receive a proportionate share of the purchase price. This was not essential to the court's decision. All that was essential was that the purported sales of leases were coupled with an understanding that the promoter would drill an exploratory well. In this respect both cases are alike. The precise arrangements for realizing on the well (if successful) and getting the profits into the hands of the investors are matters of detail, which are not essential elements of an investment contract and which may take a variety of forms.

[26] This is an unreported criminal contempt case. In the third conclusion of law the court held that "defendant's sales of assignments of oil and gas leases involved the sale of * * * 'investment contracts' * * * and therefore constitute the sale of a 'security' as defined by Section 2 (1) of the Securities Act." Copies of the court's findings and conclusions were filed with the clerk along with the petition for certiorari in the present case.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed.

Respectfully submitted.

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SEPTEMBER 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943

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No. 815 24

In the
Supreme Court of the United States
OCTOBER TERM, 1942

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

C. M. JOINER LEASING CORPORATION AND C. M. JOINER,
Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 815

In the

Supreme Court of the United States

OCTOBER TERM, 1942

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

C. M. JOINER LEASING CORPORATION AND C. M. JOINER,
Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Respondents respectfully submit that the opinion of the Circuit Court of Appeals and District Court correctly decide the questions involved. There is no conflict between those opinions and that of the Court in the *Atherton case, 128 F. (2d) 463* where the defendant came within the very terms of the statute by obligating himself to sell the entire acreage including the drilling site and each purchaser of an assignment would receive a proportionate part of the purchase price. There was no such agreement here. Each purchaser obtained a definite commercial lease which he could sell or develop as he chose.

As far as size is concerned there are more producing wells in Texas today on 2½ acre tracts than on larger

tracts. At any rate, the sales made by respondents were of interests in land and not securities.

We respectfully suggest that the application ought to be denied.

Respectfully submitted,

DAVID A. FRANK,
Attorney for Respondents.

March, 1943

No. 24

In the

Supreme Court of the United States

OCTOBER TERM, 1943

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

C. M. JOINER LEASING CORPORATION AND C. M. JOINER,

RESPONDENTS' ANSWERING BRIEF

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RESPONDENTS' ANSWERING BRIEF

THE ISSUE

The issue is whether sales of leases by these respondents, C. M. Joiner Leasing Corporation and C. M. Joiner, as its president as made, were securities within the meaning of the Statute.

THE DISTINCTION

The Petitioner brought suit against three defendants and included these respondents. The other defendant did not contest the matter enough to hire a lawyer. This was just another wild-cat well like hundreds of others in Texas, and there was such a small amount involved that Johnson merely let an injunction issue and went on with whatever other business he had.

C. M. Joiner was interested in the matter only through ownership of stock in and as president of the corporation. The corporation was not organized for the purpose of exploiting or drilling one well. It had drilled many wells and owned leases and royalties in a number of counties of Texas. In spite of the suit, it went ahead and completed the well as a producer of gas and would have been producing gas in commercial quantities at this time had governmental restrictions permitted it to purchase pipe to connect it to the pipe line. No leases have been sold by it since filing the suit and no leases are for sale.

All leases sold by it were commercial and every purchaser, at the date of the purchase, and now, can, under Texas law, drill his own well, and is assured of gas and a possibility of oil. Of the 254 counties in Texas, four-fifths are said to be producing oil.

As far as any need of an injunction in this case goes, there was never any necessity for it, and if one is granted, it will be futile, the whole question being moot and academic.

THE STATUTE

The Statute (Petitioner's Brief, p. 2) mentions fifteen kinds of securities all of which except one, are paper evidences of something of value and adds "or, in general, any interest or instrument commonly known as 'security'."

Certainly, if a gas or oil lease on land had been intended by Congress to be included as a "security", it missed a beautiful opportunity to list it as such for, surely, not even Petitioner's counsel would claim that a gas and oil lease is or has ever been "commonly known" as a "security."

Concededly, Congress could call a general warranty a lease, a mineral deed, or possibly a marriage license a "security" and from that time on it would be one. But Congress has not called an oil and gas lease as such, a "security."

What the Petitioner is attempting here is to persuade the court to usurp the functions of Congress and do a little legislating for it. No reason appears for its restraint in calling upon Congress to add another phrase to the act. Congress has enacted thousands of rules, regulations, laws, edicts, restrictions, and directions, and authorized the scores of alphabetical bureaus to enact other thousands of rules for the citizen to break at his peril. Why would not the Securities and Exchange Commission petition the Congress rather than this Court to amend the statute?

MEANING OF STATUTE

There is no question here, at all, except as to the meaning of the Statute. If the Statute includes the ordinary oil and gas lease, then Petitioner is right in its contention. But, unless it does, then clearly Petitioner should fail.

We assert confidently that, to an ordinary reader, an oil and gas lease on land is not included in the Statute. Certainly, if an oil, gas, or other mineral lease had been meant to be included, it would have been a futile thing to add "fractional, undivided, interest in oil, gas or other mineral rights." For surely, the greater would have included the lesser.

But it may be asked why may not a 100% lease be classed as a security, if a fractional undivided interest in oil, gas or other mineral rights is made so by the Statute? The

answer is obvious. The promoter who takes a tract of 1,000 acres of land and sells 10,000 "interests" therein will get his money out only when he sells all the interests, and when he does that, he is no longer an owner with something to gain by bringing in a well. Indeed, every acre he sells decreases his motive to succeed.

That is not the case when he sells a commercial lease. The driller has what he calls a drilling block of from 40 to 160 acres which he retains for himself and sells off whatever acreage he can around this block, usually to obtain the money with which to drill. That was not the case here, however; the C. M. Joiner Leasing Corporation, while it did not have enough money to drill the well when it started, owned land, leases and royalties in other fields and actually spent over twice as much money in completing the well as it took in by the sale of leases.

THE RULE OF CONSTRUCTION

The rule of construction applicable here is that words in an act will be taken as being **in pari materia, and** that **expressio unis est exclusio alterius.**

The Act lists "Any 1) note, 2) stock, 3) treasury stock, 4) land, 5) debenture, 6) evidence of indebtedness"—each and all papers representing some kind of ownership in something supposed to be tangible, but at the same time not carrying with it any right of possession, control or direction.

Then, the Act lists "7) collateral trust certificate, 8) preorganization certificate or 9) subscription, 10) transferable share, 11) investment contract, 12) voting trust certificate, 13) certificate of deposit for a security,"—and

each of these is a proper certificate purporting to give a right to profit in some way, but not, at all, parting with title to any tangible property, and not conveying to the purchaser anything beyond a right to participate. And, each of these is called a "security", and all of them have something in common.

Then the Statute lists "14) fractional undivided interest in oil, gas or other mineral rights." Notice that it does not say "in oil, gas or other mineral lands, leases or royalties", but, "rights." Now, just what an oil right, or gas right, or mineral right may be might be the subject of some debate. But, let us assume the broadest possible meaning for it and take "deed" and "right" as synonymous. The reason for the inclusion may appear in the fact that a fractional undivided interest assumes some of the characteristics of stock in that some oil drillers instead of selling, outright, a portion of their holdings, as respondent, C. M. Joiner Leasing Corporation, did, in the case at bar, sought to retain control of the entire area, and obtain whatever advantage there might be in a larger spread of acreage and at the same time obtain funds to finance the drilling of their wild-cat wells.

Following the inclusion of "fractional undivided interest in oil, gas or other mineral rights", the language used is "or, in general, any interest or instrument commonly known as a 'security'."

Thus, it is apparent that Congress had no thought of including oil, gas or other lands or interests in lands or leases on lands, in which the purchaser has a complete severance of title and is free to do as he pleases with his lease.

Hundreds of people in the East Texas Oil Field purchased a lease upon just a few acres of ground, when the president of the company which is respondent here, as well as himself a respondent, was in the act of bringing in the great East Texas Oil Field, and after paying rentals for several years, drilled wells or had them drilled under such leases and profited greatly thereby.

It is common knowledge that, in an early field in Texas some purchasers who bought leases at a nominal price saw the same leases later sell for as much as one hundred thousand dollars per acre.

SUMMARY OF ARGUMENT

Under this heading, petitioner has made an argument so specious that one is surprised that eminent counsel would present it to a **nisi prius** court much less to a court of such dignity and learning as this court. Grasping for some nail upon which to hang its argument, it picks out "investment contract" (thirteen on the list) as including an oil or gas lease and hitches its argument to that vague expression. In a sense, a purchase of any kind could be called an "investment contract." The housewife who grapples with ration cards, these days, doubtless considers she has made an investment contract when she musters a sufficient number of "points" and enough ready cash to buy a beef roast. But, Congress had no such idea when it passed this Act. It was not including land or leases or royalties or interest in such except when "fractional undivided interest in oil, gas or other mineral rights" were being sold.

Indeed, counsel get themselves out upon a limb in their zeal to stretch the Statute to this attenuated point. Their

very statement that courts have found an "Investment Contract" in the case of a large number of schemes for the **purported** "sale" or "lease" of some form of real * * * property under **an arrangement whereby the seller retains possession and control of the subject of the "sale" or "lease" with a view to earning a profit for the nominal owners or lessees** (bold face ours), (brief, p. 6), shows to what dire need counsel was put for an illustration; for, certainly no such case is made by these facts.

And, the statement that "measured by these tests, the transactions here in question clearly involve the sale of a security" is a mere begging of the question. It neither proves anything nor does it follow from anything proven.

And, the statement that "they have made a speculative investment in a common enterprise from which they hope to secure a profit entirely through the efforts of Respondent Joiner in bringing in a successful well and thus increasing the value of all of the surrounding acreage" is not based upon fact, in that there is and was no common enterprise. Each purchaser has full title to his lease and not one dollar could, would or did go to any one of them upon the C. M. Joiner Leasing Corporation's completion of a commercial gas well. Had the company brought in as great a field as the Rusk County Field in East Texas, not one cent of its profits would have gone to any purchaser; therefore, there could have been no common enterprise, any more than when a purchaser buys a town lot when a railroad is built, or a war plant locates, or deep water for the port is planned. Such a purchaser makes his money, if at all, not from the seller but from the use or sale of his lot to someone else for more than he paid for it.

Of course, when one deals in sophistry, he runs from one false conclusion to another with shameless ease, as witness this gem of legal lore: "The mere fact that real property was involved does not take the transaction out of the category of a 'security' transaction."

Shades of Blackstone and Storey; of Devlin and Thompson! Since when, did land become a security? Imagine a man's advertising a sale of "securities" and asking customers to meet him at a certain spot and there pointing out some prospective city lots as "securities."

Webster's Unabridged Dictionary defines securities as "Evidence of debt, or of property, as stock certificates, bonds and the like."

The new **International Dictionary** defines it in the same language as Webster, and adds "a document giving the holder the right to demand and receive property not in his possession."

Words and Phrases under the heading "securities", quotes several definitions, among them: "Written assurances for the return or repayment of money or evidences of indebtedness." **Jaffe v. Goldner**, 251 Ill. App. 188, and "the term 'securities' in its ordinary meaning does not cover deeds to realty." **People v. Jackson**, 74 P. (2d) 1090.

Corpus Juris, 59, p. 1279, defines securities: "In common commercial parlance the term is understood to refer to live and negotiable obligations.

"It has been held not to include cash in bank; nor contracts for future delivery of a commodity; nor jewelry; nor judgments; nor land; nor mere choses in action, nor

real estate and mortgages of an insolvent." 56 C. J., p. 1280.

But counsel for petitioner defines it as "land."

Of course, if real property, land, leases of land, interests in land, not fractional but entire, are "securities", petitioner is right. But that is the issue.

Nor, is any force lent to the argument by the earnest desire and partisan enthusiasm of learned counsel.

Right here, let us come to an understanding as to who is the respondent in this case. The record shows that suit was brought against C. M. Joiner, C. M. Joiner Leasing Corporation and John Johnson doing business as Miller Leasing Company. Joiner did not own a foot of the lease which was the property of the C. M. Joiner Leasing Corporation. There were other stockholders. The corporation paid for drilling the well (not once, but more than twice) before it was completed at a depth of about 1,700 feet as a commercial producing gas well. Johnson was not much of a promoter; else, he would not have been selling leases near a drilling well at $15.00 per acre. The evidence fails to show that he made enough profit on his sales to pay his advertising and postage bills.

The evidence shows positively that the C. M. Joiner Leasing Corporation sold only $2,600.00 worth of leases to Johnson and $758.50 to others, making a total of $3,350.00, whereas the first contract price to drill the well was $5,000.00 and several times the amount realized on sale of leases was spent in completing the well, including cost of casing.

Where was there anything wrong? Johnson just was not able to fight the case and this gave courage to attorneys to proceed and spend many times the amount of sales in government funds, taking expensive depositions and rolling up hundreds of dollars in clerk's, reporter's and printer's bills, to say nothing of valuable time of men who ought to be engaged in some more worthy cause.

And for what? To try to induce this court to say that land is a security, within the meaning of the statute!

We come back to the assertion that there is only one respondent here and that is C. M. Joiner Leasing Corporation. No sales were made by C. M. Joiner, and Johnson is no longer a party.

The issue, then, is squarely and, certainly, **narrowly**, whether sales of leases made either directly to purchasers by C. M. Joiner or other officers or agent of the company or, indirectly, through Johnson, are or were inhibited by the terms of the Statute, for the reason that such sales were sales of securities as there defined.

ARGUMENT

Again, we bow to a master legal mind that can come so close to facing an issue and then so cleverly side-step it by non sequiturs. Counsel continues to assume without proving their conclusion.

Where is there one iota of evidence that the **respondent** sold more than an "interest in land" or "sold interests in a business enterprise to persons who were led to expect that they would profit through efforts of the seller?"

The fate of this country today almost hangs in balance, so dependent are our armed forces upon the production of oil. Should oil, in the United States, suddenly cease to be produced and none be produced for one year, we would probably lose the war and might become a subservient nation. Certainly the war could not be won without it.

Counsel have some sort of vague notion that people in Texas and other states who deal in Texas leases think, when they buy an oil and gas lease that they have bought a bond. Figures show that for every wild-cat well that produces oil there are literally hundreds of "dry holes."

Counsel go into a tailspin in discussing the design and purpose of the securities act. At least the dissertation is rather elementary and wholly beside the mark.

What relevancy is there in the obvious fact that "material facts bearing on the value of securities offered through the mails or in interstate commerce" be honestly disclosed.

Counsel fumble for some portion of the Statute upon which to pin their case and always come back to "Investment Contract." They point out that the Statutes of thirty states contain these delightful words; but, they utterly fail to cite one case holding that an investment contract is synonymous with any kind of deed to land, or gas or oil lease, unaccompanied by some other agreement as to management and earning of profits.

The cases cited, all, turn upon something beyond and in addition to a deed or lease. And, naturally so; for if it be a lease or deed that ends the matter. The buyer is on his own. But, if he gets a deed coupled with an interest in the well, or buys a fractional interest in the well, he comes

within the Statute. The difficulty confronting petitioner is in stretching a plainly written Statute to fit a cock-eyed theory of what the law ought to be rather than of what it is.

It will be noted that notwithstanding the fact that a majority of the states have the magic words, "Investment Contract" in a similar statute, yet not a single court in a single one of the thirty states as far as we know, has ever held that a deed or oil lease in the standard form is an "investment contract", and counsel are relegated to the doubtful effort of lifting themselves over the fence by their own boot straps, by citing petitioner's own findings in the **Natural Resources Corporation Case**, 8 S. E. C. 635. Why not further strengthen their case by citing their findings in the case at bar? It reduces to an absurdity.

Counsel, admitting the issue is narrow, persistently and consistently dodge a discussion of the Statute. They lay down an untenable premise and arrive at an illogical conclusion.

At page 12 of their brief, they state again, as they had before, and as they do over and over again, with an air of **ipse dixit**, that "it is immaterial whether their shares in the enterprise take the form of stock or bond ownership, or of nominal interests in the physical assets employed in the enterprise. When these conditions are present, the substance controls the form, and a sale of a 'security' in the nature of an 'investment contract' occurs." **But**, just as soon as they attempt to apply this pronouncement, they cut the ground out from under themselves by putting in the conditions, not present in the case at bar, that the schemes comprehend "an arrangement by which the seller

retains possession and control of the subject of the 'sale' or 'lease' with a view to earning a profit for the nominal owners or lessees." Of course.

And again witness page 14 of the brief, where with the utmost **sang froid**, counsel say, without demonstrating, and without support in the testimony, "The transactions in this case fall well within the limits of the tests thus enunciated. The circumstances readily establish that the purchasers have not merely acquired leasehold interest in specific parcels of realty, but rather have made a speculative investment in a common enterprise from which they hoped to secure a profit through the activities of respondent Joiner." What circumstances? How? To what extent? What investment have they made except what Judge Kennemer points out—the same as any man who buys a piece of land?

There is not a line of testimony in the case to justify this statement and not an authority from a reputable court to sustain it.

Mild misstatements, also, occur, as appears in the quotation "Following a well recognized pattern in the sale of oil and gas leases to the public, Joiner first found an area in which there was little indication of oil." There was no evidence either that Joiner or any other oil driller, "following a well recognized pattern" first found an area in which there was little indication of oil. On the contrary. Counsel cites the evidence of an inactive ex-geologist, who so far as the record goes drilled but one well and that was a dry hole. (R. p. 104A.) He was also a biased witness, working for petitioner, and missed his guess as to there being no oil in that particular county. (F. pp. 66A, 113A.) It is also

a matter of common knowledge that new fields are being rapidly developed in all parts of central and west Texas.

Counsel also misquote the record when they state "Then **after organizing the respondent company,** in whose name he obtained a lease on 3,000 acres, etc." (Brief, p. 15.) The C. M. Joiner Leasing Corporation had been operating for several years prior to obtaining possession of the 3,000 acres of leases.

Also, the statement that "Joiner caused to be sent to over 1,500 individuals * * * promising that he was going to help his 'many friends' ", is misleading. The references to the record do not support the statement. That is nothing in the first reference even remotely suggesting such a statement. The second reference (R. p. 125A) is to a circular put out by Johnson and in the letter purportedly signed by Joiner, contained therein, there is no such statement. The only approach to the statement is by Johnson who stated "That his greatest ambition is to again duplicate his East Texas Discovery, thereby rewarding his many friends who have kept faith with him." Clearly that was Johnson's version. It was, however, literally true, **believe it or not.**

Defendant Joiner testified positively he never saw Exhibit 4 until the trial and that he did not write the letter dated December 11, 1940 included therein and that he never wrote such a letter; that Johnson had taken an old letter five or six years old and made some changes in it (R. p. 88A, 89A); also, that he had used the word "Paramount" only one time since the well was started and that was in a

letter to Johnson. (R. 89A.) Johnson admitted that he named the well the Paramount well.

"Q. Mr. Joiner had nothing on earth to do with calling it the Paramount, did he?

"A. He didn't call it that yet.

"Q. He never did call it Paramount, that was your language?

"A. I termed that the Paramount well to distinguish it from other wells he was drilling." (R. p. 64A.)

Johnson testified that he did not know whether Mr. Joiner ever saw Exhibit 4 or not. (R. p. 66A.)

That exhibit contained two of the three quotations on page 15 of petitioner's brief, which, while absolutely true, were never seen by Mr. Joiner.

Likewise, the quotation at the top of page 16 is from a letter Johnson sent out and that Joiner never saw.

Attention is also called to the fact that Joiner and not the purchasers selected the drilling contractor and arranged the terms of the drilling contract and the contractor not the purchasers selected the drilling site. (Brief, p. 17.) Why the statement? What does it prove? Has there ever, since the first oil well was drilled, been a case where this exact procedure was not followed?

And as to selection of leasehold location, Johnson had contracted to get the closest unsold leases to the well for his customers,—certainly to the advantage of the customer, in case a producer was brought in.

Counsel also advances a gratuitous conclusion in these words: "Other factors here present reinforce the conclu-

sion that the purchasers have not bought realty for their own use but rather have made an investment in a common enterprise, the value of which depended on the efforts of the promoter. Many of the investors live at great distances from the site of the property of which they are the nominal lessees." (Brief, p. 17.)

Either counsel are very naïve or are woefully unfamiliar with oil field history in Texas. The original East Texas field which was brought in by this same C. M. Joiner is 40 to 60 miles long, and five to thirteen miles wide and every inch of it has been bought or leased in plots ranging from one-fourth acre to many hundreds of acres and by persons in practically every state of the union and many foreign countries. And not a one of them considered himself a "nominal lessee." And five hundred million dollars is a conservative estimate of the amounts realized by purchasers of leases in that territory.

Counsel's reference to the small size of the leases is meaningless. The old spacing rule was for wells to be 300 feet apart, which made 2½ acres the standard drilling site. Since the war began (February 18, 1943) the 20-acre spacing was put into effect to restrict the number of wells. But even that rule has no legal meaning in a new field. When a man buys 2½ acres—either, in fee or by lease, prior to the drilling of the first well. In California, derricks touch derricks, so small are the drilling sites. In the Beaumont field, brought in before any spacing rules, wells were put down on tracts too small for a derrick, easement for drilling purposes being reserved on adjoining tracts.

The third statement on page 15 refers to a letter dated August 16, 1941 by C. M. Joiner Leasing Corporation, and

shows on its face that on August 15, 1941 it was stamped "Securities and Exchange Commission. Received Fort Worth Regional Office."

Likewise pages 167A and 175A show similar markings.

Thus, plaintiff's Exhibits 17, 18 and 19 have the stamp of plaintiff and each one contains language as follows: "Because these securities are believed exempted from registration, they have not been registered with the Securities and Exchange Commission; but such exemption, if available, does not indicate that the securities have been either approved or disapproved by the Commission or that the Commission has considered the accuracy or completeness of the statements in this communication."

This language, Defendant Joiner testified he got from the Securities and Exchange Commission, and that before sending out any sales letters copies were filed, twenty-four hours in advance, with plaintiff, and he got a receipt for each one. Also that these three letters were the only letters sent out by him.

Likewise counsel deliberately state (Brief, p. 15) "Heavily emphasized was the fact that this was on 'investment' and that those who purchased would be investors in 'one of Mr. Joiner's greatest achievements'."

Anyone reading all of page 15 would naturally think this refers to what Defendant Joiner or C. M. Joiner Leasing Corporation had done. Yet there is no such language on page 56A of the record and page 141A refers to a letter sent out by John T. Johnson and the meaning is entirely changed by the statement as made and above quoted. Here is the actual sentence, and the only sentence containing

the word investment: "We sincerely hope that this will reward you handsomely with a nice profit on your investment, because we believe that this well is destined to be one of Mr. Joiner's greatest achievements." (R. 141A.) And that letter was written not by either of these defendants but by Johnson.

The stated comparison of the amount involved as to the cost of a well in McCulloch County is also unfair. The contract in evidence called for a payment of $5,000.00, 3/5 of which was to be paid as the well progressed and 2/5 upon completion of the well. Yet counsel say that wells in that portion of Texas cost from $10,000.00 to $21,600.00. (Brief, page 18.) Counsel also ignore the well-known fact that an exploratory well usually costs several times as much as later wells, for the reason that the structure has been determined. It took three years to bring in the first producer in East Texas and, later, similar wells were drilled in ten days,—at a fraction of the cost of the discovery well.

The utterly unsupported statement that "this indicates that the investors had no intention of independently developing their holdings is inexcuseably without warrant. Over thirty thousand wells have been drilled in one field in East Texas, by far the greater number of which were upon small tracts.

Likewise, the statement that "These factors, together with other physical and economic considerations limiting the number of profitable wells in so barren an area as McCulloch County", is an utter assumption, founded upon the testimony of an ex-geologist who stated "There are no producing oil fields in McCulloch County." Whereas the trial

judge found that "subsequently and quite recently, in fact, oil has been found in that particular county." (R. p. 116A.)

Counsel whip themselves up to a false conclusion by building upon so many false premises and half quoting, half misquoting, so many matters of fact that, with all due respect, we feel they are lacking in a full comprehension of the facts in this case.

To petitioner's sole proposition we present a simple

COUNTER PROPOSITION

The Statute having undertaken to define the term "Security", the courts are without power or jurisdiction to add another class of conveyances to the act.

STATEMENT

The Statute is set out on page two of petitioner's brief and will not be repeated.

An oil and gas lease is not listed in the Statute as a "Security"; but, fractional undivided interests in such leases are listed.

ARGUMENT

The fact that Congress did not originally list "fractional undivided interest in oil, gas, or other mineral rights" in the definition of security shows that the matter was later called to its attention. That was the time when, if Congress had intended to include oil and gas leases in the definition, it could easily have done so. In fact, it would have been much simpler than to select out "fractional undivided interest in" such leases and denominate it as a "security." Also, the fact that Congress thought the original language

was broad enough to include "Certificates of interest in oil, gas or mineral leases or royalties" shows that Congress was considering such "certificates" and, later, such "fractional undivided interest in oil, gas or other mineral rights" was added to clarify the Statute.

It is inescapable that Congress did not intend to do a futile thing. It would have been a futile thing to make a fractional undivided interest a security, if an entire interest had already been declared to be one. Nor is there any support in the authorities cited by petitioner for the fantistic view advanced.

The **Atherton** case comes clearly within the Statute, and leaves no reason for judicial legislation.

No other reported court case even mildly supports petitioner's contention.

The question is tersely summed up in the opinion in the Circuit Court of Appeals when the court says: "To hold that such sales and assignments, which as stated, are interests in land, are sales of securities would be stretching and straining the coverage of the Act far beyond what Congress intended."

The only observation we would make as to the reasoning of the appellate court is as to its failure to bottom its decision, as did the trial court, upon the proposition that if Congress had intended to include oil and gas leases as securities, it would have done so in so many words and not left it to a strained judicial construction.

As stated by the trial court "One can hardly justify the reading of a Statute which has flaws in it such as this

Statute, in such way as to cover what it manifestly does not cover."

"The very wording * * * excludes, because it mentions leases but mentions the kind of lease, and the leases here are not the kind of leases mentioned in the Act." (R. p. 117A.)

In the **Atherton** case, no matter what else they got, each purchaser obtained an undivided fractional interest in the residuary property. The court, in that case, states plainly "Clearly the investor acquired more than a mere lease."

In the case at bar, the appellate court said: "We think however, the true test is the title or rights of the purchaser after his purchase, i.e., what title, right or interest the purchaser had after all had been said and done with respect to his purchase." (R. p. 199.)

While we do not believe it necessary to quote from authorities to prove our contention that an oil and gas lease is an interest in land and, therefore, not a security as "commonly known", yet we do think it not amiss to direct the court's attention to its own decision in the case of **Downman v. State of Texas**, 231 U. S. 353, 58 L. ed. 264, holding that "different elements of the land are capable of being severed and separately owned."

Other authorities to like effect are:

Central Coal and Coke Co. v. Casselowey, 46 Fed. 540; same case, 45 Fed. (2d) 744;

R. R. Commission v. Rowan, 310 U. S. 579.

This court has many times expressed itself as the proper construction of language that might be given more than meaning or construction as witness:

Arthur v. Cumming, 91 U. S. 362, 23 L. ed. 438, which holds that "descriptive terms applied to articles of commerce shall be understood according to the acceptation given to them by commercial men in our own ports at the time of the passage of Acts, in which they are found."

Other cases are:

Moseley v. Fikes, 126 S. W. (2d) 599;
Stephens v. Mid Kansas, 113 Tex. 160;
Texas Co. v. Dougherty, 107 Tex. 226;
Bashara v. Saratoga, 163 S. W. (2d) 631;
Hager v. Slakes, 294 S. W. 842;
Sheffield v. Hogg, 124 Tex. 290;
Quintana v. State, 127 S. W. (2d) 357.

The conclusion seems to be sound that **first**, an oil and gas lease is "land" and therefore not a security, as commonly understood or commonly known; **Second**, that Congress has, plainly, not included such a lease as a "Security"; and, **Third**, that, only by judicial legislation, can such a lease become a security in the sense of the Statute.

Well recognized rules of interpretation would have to be violated to hold contrary to such conclusion. It is such holding that petitioner asks the court to make, while we urge that the court adhere to established rules.

In our opinion, this great court has quite a large sphere in which to operate, merely deciding the law as it is, rather than invading the province of the legislative branch and declaring something to be the law which was not, in the opinion of thinking men, the law before such declaration. For that is legislation,—a function another great branch of the Federal Government exercises.

CONCLUSION

For the reasons stated, we respectfully urge that the decisions of the lower courts be affirmed.

Respectfully submitted,

David A. Frank

DAVID A. FRANK,

Attorney for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 24.—October Term, 1943.

Securities and Exchange Commission, Petitioner, *vs.* C. M. Joiner Leasing Corporation and C. M. Joiner.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[November 22, 1943.]

Mr. Justice Jackson delivered the opinion of the Court.

The Securities and Exchange Commission brought this action in District Court to restrain respondents from further violations of §§ 5(a) and 17(a)(2) and (3) of the Securities Act of 1933.[1] The District Court denied relief and the Circuit Court of Appeals affirmed upon a construction of the statute which excludes from its operation all trading in oil and gas leases. As this presents a question important to the administration of the Act we granted certiorari.[2]

Respondents and one Johnson, a defendant against whom a decree was taken by consent, engaged in a campaign to sell assignments of oil leases. The underlying leases, acreage from which was being sold, are not in the record. They required, as appears from the assignments, annual rental in case of delayed drilling of $1 per year. It also seems that these leases were granted by the land owners on an agreement that a test well would be drilled by the lessees. One Anthony blocked up leases on about 4,700 acres of land in McCulloch County, Texas, in consideration of drilling a test well. Defendant Joiner testified that he acquired 3,002 of these acres for "practically nothing except to drill a well." Anthony was a driller and agreed to do the drilling which the Joiner Company undertook to finance, expecting to raise most of the funds for this purpose from the resale of small parcels of acreage. The sales campaign was by mail addressed to upwards of 1,000 prospects in widely scattered parts of the country and actual purchasers, about fifty in number, were

[1] 48 Stat. 74, 15 U. S. C. § 77e(a) and § 77q(a), (2), (3).

[2] — U. S. —.

located in at least eighteen states and the District of Columbia. Leasehold subdivisions offered never exceeded twenty acres and usually covered two and a half to five acres. The prices ranged from $5 to $15 per acre. The largest single purchase shown by the record was $100, and the great majority of purchases amounted to $25 or less. All buyers were given the opportunity to pay these sums in installments, and some did so.

The sales literature nowhere mentioned drilling conditions which the purchaser would meet or costs which he would incur if he attempted to develop his own acreage. On the other hand, it assured the prospect that the Joiner Company was engaged in and would complete the drilling of a test well so located as to test the oil-producing possibilities of the offered leaseholds. The leases were offered on these terms: "You may have ten acres around one or both wells at $5 per acre cash payable by August 1st, 1941 and $5 per acre additional payable November 1st, 1941 or thirty days after both wells are completed." Other language in the advertising literature emphasized the character of the purchase as an investment and as a participation in an enterprise.[3]

The trial court made findings of what amounted to fraud, and the Circuit Court of Appeals approved, saying, "the evidence

[3] The following are extracts from letters signed by the Joiner Company and by Joiner: "We are pleased to report our Concho County well drilling at approximately 2510 feet in a very good formation. We are sending out 800 feet of 8¼ inch casing to be run in the McCulloch County well tomorrow. Both wells should be completed during next month . . . This offer goes to you who now have a lease around one or both of these locations, and also to you who have at some time invested in a lease or leases around some well that the C. M. Joiner Interests have drilled. . . . we are submitting this proposition to you in language that will appeal only to business people who are interested in making an investment where they have a good chance for splendid returns on the investment." "There has nothing happened to, either of these wells that would lessen the prospects for the opening of a new oil field. . . . We feel that if we are to get the law of average that one or both these wells should be producers. I know you would like the thrill that comes to those owning a lease around a producing well. . . . if you send in an order for twenty acres . . . you will get ten acres Free in the next block of acreage we drill which is most likely to be in Concho County, Texas. You will really be in the oil business." "Remember, if *you* do not make money on your investment it will be impossible for us to make money. . . . Fortunes made in oil go to those who invest. We believe you should invest here, and now!"

There is also on the circulars and selling letters the following statement: 'Because these securities are believed exempted from registration, they have not been registered with the Securities and Exchange Commission; but such exemption, if available, does not indicate that the Securities have been either approved or disapproved by the Commission or that the Commission has considered the accuracy or completeness of the statements in this communication.'

The origin of this is uncertain from the evidence. Joiner says he "got it" from the Commission. What weight, if any, should be given under the cir-

would justify stronger findings of fraud."[4] However, both courts refused injunction because, as the Court of Appeals stated, it could "find simply sales and assignments of legal and legitimate oil and gas leases, i.e., sales of interests in land." It was thought that these assignments could not be proved to be "securities" or "investment contracts" under § 2(1) of the Act.

Undisputed facts seem to us, however, to establish the conclusion that defendants were not, as a practical matter, offering naked leasehold rights. Had the offer mailed by defendants omitted the economic inducements of the proposed and promised exploration well, it would have been a quite different proposition. Purchasers then would have been left to their own devices for realizing upon their rights. They would have anticipated waiting an indefinite time, paying delayed drilling rental meanwhile until some chance exploration proved or disproved the productivity of their acres. Their alternative would have been to test their own leases at a cost of $5,000 or more per well.[5]

But defendants offered no such dismal prospect. Their proposition was to sell documents which offered the purchaser a chance, without undue delay or additional cost, of sharing in discovery values which might follow a current exploration enterprise. The drilling of this well was not an unconnected or uncontrolled phenomenon to which salesmen pointed merely to show the possibilities of the offered leases. The exploration enterprise was woven into these leaseholds, in both an economic and a legal sense; the undertaking to drill a well runs through the whole transaction as the thread on which everybody's beads were strung. An agreement to drill formed the consideration upon which Anthony was able to collect leases on 4,700 acres. It was in return for assumption of this agreement that Joiner got 3,002 of the acres, leaving Anthony about 1,700 acres for his trouble. And it was his undertaking to drill the well which enabled Joiner to finance it by the sale of acreage. By selling from 1,000 to

cumstances to this characterization of what was being sold as "securities" is not clear. They had to be securities to be exempt securities under the Act. 15 U. S. C. § 77c.

[4] The nature of the misrepresentations is not material to the question here. They related generally to the location of the properties in respect of producing territory.

[5] Joiner's well was to cost over $5,000. The estimated average cost of drilling wells in West Central Texas is about $10,000. See table reproduced in House Hearings on H. Res. 290 and H. R. 7372, 76th Cong., 3d Sess. (1939) Pt. I, p. 350.

2,000 acres at from $5 to $15 per acre, he could fulfill his obligation to drill the well, recoup his incidental expenses and those of the selling intermediaries, and have a thousand acres left for the gamble, with no investment of his own; and if he sold more, he would have a present profit. Without the drilling of the well, no one's leases had any value, and except for that undertaking they had been obtained at no substantial cost. The well was necessary not only to fulfill the hopes of purchasers but apparently even to avoid forfeiture of their leases.

Whether, as the dissenting Judge below suggests, the assignee acquired a legal right to compel the drilling of the test well is a question of state law which we find it unnecessary to determine. The terms of the offering as quoted above, either by itself or when read in connection with the agreement to drill as consideration for the original leases, might be taken to embody an implied agreement to complete the wells. But at any rate, the acceptance of the offer quoted made a contract in which payments were timed and contingent upon completion of the well and therefore a form of investment contract in which the purchaser was paying both for a lease and for a development project.

It is clear that an economic interest in this well-drilling undertaking was what brought into being the instruments that defendants were selling and gave to the instruments most of their value and all of their lure. The trading in these documents had all the evils inherent in the securities transactions which it was the aim of the Securities Act to end.

It is urged that the definition of "security" which controls the scope of this Act[6] falls short of including these transactions. Respondents invoke the "*eusdem generis* rule" to constrict the more general terms substantially to the specific terms which they follow. And they invoke the ancient maxim "*expressio unius est exclusio alterius*" to exclude sales of leasehold subdivisions by the agre because the statute expressly includes sales of leasehold subdivisions by undivided shares.

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[6] Section 2(1) of the Act, 15 U. S. C. § 77b(1), provides:

"The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase, any of the foregoing."

Some rules of statutory construction come down to us from sources that were hostile toward the legislative process itself and thought it generally wise to restrict the operation of an act to its narrowest permissible compass.[7] However well these rules may serve at times to aid in deciphering legislative intent, they long have been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.[8]

In the Securities Act the term "security" was defined to include by name or description many documents in which there is common trading for speculation or investment. Some, such as notes, bonds, and stocks, are pretty much standardized and the name alone carries well settled meaning. Others are of more variable character and were necessarily designated by more descriptive terms, such as "transferable share," "investment contract," and "in general any interest or instrument commonly known as a security." We cannot read out of the statute these general descriptive designations merely because more specific ones have been used to reach some kinds of documents. Instruments may be included within any of these definitions, as matter of law, if on their face they answer to the name or description. However, the reach of the Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or

[7] In the first edition of Statutes and Statutory Construction by Sutherland he no doubt expressed the impression gleaned from extensive reading of cases when he wrote in the preface (1890): "The natural tendency and growth of the law is towards system and towards certainty, towards modes of operation at once practical and just, by the process of its intelligent judicial administration; but this process is impaired by overwork and legislative interference." In the third edition (1943) Horack observes in the preface: "The third edition reflects the growing acceptance of statutes as a creative element in the law rather than, as Sutherland suggested in the first edition, as 'legislative interference'."

[8] This Court has refused to follow the "ejusdem generis" rule, even in criminal cases, where its application seemed to conflict with the general purpose of an act. United States v. Gilliland, 312 U. S. 86, 93; Prussian v. United States, 282 U. S. 675, 679; and Gooch v. United States, 297 U. S. 124, 128; see also Helvering v. Stockholms Enskilda Bank, 293 U. S. 84, 88-89.

It has also treated the maxim "expressio unius est exclusio alterius" as but an aid to construction. United States v. Barnes, 222 U. S. 513, 519; Springer v. Philippine Islands, 277 U. S. 189, 206; Neuberger v. Commissioner, 311 U. S. 83, 88.

courses of dealing which established their character in commerce as "investment contracts," or as "any interest or instrument commonly known as a 'security.'" The proof here seems clear that these defendants' offers brought their instruments within these terms.

It is urged that because the definition mentions "fractional undivided interest in oil, gas or other mineral rights," it excludes sales of leasehold subdivisions by parcels. Oil and gas rights posed a difficult problem to the legislative draftsman. Such rights were notorious subjects of speculation and fraud, but leases and assignments were also indispensable instruments of legitimate oil exploration and production. To include leases and assignments by name might easily burden the oil industry by controls that were designed only for the traffic in securities. This was avoided by including specifically only that form of splitting up of mineral interests which had been most utilized for speculative purposes. We do not think the draftsmen thereby immunized other forms of contracts and offerings which are proved as matter of fact to answer to such descriptive terms as "investment contracts" and "securities."

Nor can we agree with the court below that defendants' offerings were beyond the scope of the Act because they offered leases and assignments which under Texas law conveyed interests in real estate.[9] In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering.[10] The test rather is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this it is not inappropriate that promoters' offerings be judged as being what they were represented to be.

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[9] Downman v. Texas, 231 U. S. 353; Texas Co. v. Daugherty, 107 Tex. 226; Railroad Commission v. Rowan & Nichols, 310 U. S. 573, 579.

[10] One's cemetery lot is not ordinarily thought of as an investment and is most certainly real estate. But when such interests become the subjects of speculation in connection with the cemetery enterprise, courts have held conveyances of these lots to be securities. In re Waldstein, 160 Misc. 763, 291 N. Y. S. 697; Holloway v. Thompson, 42 N. E. 2d 421 (Ind. App.). For other instances where purported sales of property have been held "investment contracts" see S. E. C. v. Crude Oil Corporation of America, 93 F. 2d 844 (interest in oil royalties sold as bill of sale for specified number of barrels of oil); S. E. C. v. Tung Corporation of America, 32 F. Supp. 371, S. E. C. v. Bailey, 41 F. Supp. 647 (land bearing tung trees, to be developed by seller); S. E. C. v. Payne, 35 F. Supp. 873 (silver foxes); Prohaska v. Hemmer-Miller Development Co., 256 Ill. App. 331 (farm land,

Finally it is urged that we must interpret with strictness the scope of this Act because violations of it are crimes.[11] Some authority is cited and a great array could be assembled to support the general proposition that penal statutes must be strictly construed. An almost equally impressive collection can be made of decisions holding that remedial statutes should be liberally construed. What, then, shall we say of the construction of a section like this which may be the basis of either civil proceedings of a preventive or remedial nature or of punitive proceedings, or perhaps both?

Different courts have given different answers to the general question.[12] Since 1911, all states except Nevada have enacted some type of "Blue Sky Law." While the laws are not uniform, they generally contain both civil and criminal sanctions, and all have the dominating purpose to prevent and punish fraudulent floating of securities.[13] The weight of authority is committed to a liberal construction,[14] although some courts tend toward strict construction,[15] and some have seemed to differentiate according to the use being made of the statute, inclining to a strict construction when a criminal penalty is being imposed and a more liberal one when civil remedies are being applied.[16]

But this Court, as early as 1820, speaking through Chief Justice Marshall, said: "The rule that penal laws are to be construed strictly, is perhaps not much less old than construction

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to be paid for with proceeds of crops raised by vendor); Kerst v. Nelson, 171 Minn. 191, 213 N. W. 904 (land to be cultivated as a vineyard by a third party); Stevens v. Liberty Packing Corp., 111 N. J. Eq. 61, 161 Atl. 193 (rabbits).

[11] 15 U. S. C. § 77t.

[12] See 3 Sutherland on Statutory Construction (3d ed. 1943) § 5703.

[13] Smith, State Blue Sky Laws and the Federal Securities Act, 34 Michigan Law Review 1135.

[14] See note 10 *supra*; Wagner v. Kelso, 195 Iowa 959, 193 N. W. 1; Wigington v. Mid-Continent Royalty Co., 130 Kan. 785, 288 Pac. 749; People v. Montague, 280 Mich. 610, 274 N. W. 347; State v. Hofacre, 206 Minn. 167, 288 N. W. 13; State v. Pullen, 58 R. I. 294, 192 Atl. 473; Kadane v. Clark, 135 Tex. 496, 143 S. W. 2d 197; Klatt v. Guaranteed Bond Co., 213 Wis. 12, 250 N. W. 825.

In Texas itself, oil and gas leases have been held by the Supreme Court to be securities within the state act, notwithstanding the fact that the act expressly includes only "any interest in or under" such leases. Kadane v. Clark, *supra*.

[15] Westenhaver v. Dunnavant, 225 Ala. 400, 143 So. 823; Somers v. Commercial Finance Corp., 245 Mass. 286, 139 N. E. 837; New Amsterdam Casualty Co. v. Hyde, 148 Ore. 229, 34 P. 2d 930; Miller v. Stuart, 69 Utah 250, 253 Pac. 900.

[16] See 3 Sutherland on Statutory Construction (3d ed. 1943) § 7104 and cases cited in note 8 thereunder.

itself. . . . It is said, that notwithstanding this rule, the intention of the law maker must govern in the construction of penal, as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend." *United States* v. *Wiltberger*, 5 Wheat. 76, 95.

This rule in substance was repeated in *United States* v. *Hartwell*, 6 Wall. 385, 396, which said also: "The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings, as the wider popular instead of the more narrow technical one; but the words should be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent." The principle has been followed in *United States* v. *Corbett*, 215 U. S. 233, 242; *Donnelly* v. *United States*, 276 U. S. 505, 512; *United States* v. *Giles*, 300 U. S. 41, 48.

In the present case we do nothing to the words of the Act; we merely accept them. It would be necessary in any case for any kind of relief to prove that documents being sold were securities under the Act. In some cases it might be done by proving the document itself, which on its face would be a note, a bond, or a share of stock. In others proof must go outside the instrument itself as we do here. Where this proof is offered in a civil action, as here, a preponderance of the evidence will establish the case; if it were offered in a criminal case, it would have to meet the stricter requirement of satisfying the jury beyond reasonable doubt.

We hold that the court below erred in denying an injunction under the undisputed facts of this case and its findings. The judgment is

Reversed.

Mr. Justice ROBERTS is of the opinion that the judgment should be affirmed.

Mr. Justice DOUGLAS took no part in the consideration or decision of this case.